

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

| | |
|--|--|
| <p>Plastic Pollution Coalition, a project of Earth Island Institute, 4401A Connecticut Avenue NW #143, Washington, DC 20008,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Danone Waters of America, LLC, 1 Maple Avenue, White Plains, New York 10605,</p> <p style="text-align: center;">Defendant.</p> | <p>Case No. <u>2024-CAB-004562</u></p> <p>COMPLAINT</p> <p>DEMAND FOR JURY TRIAL</p> |
|--|--|

PREAMBLE

Plaintiff Plastic Pollution Coalition, a project of Earth Island Institute, brings this action against Defendant Danone Waters of America, LLC concerning false and deceptive marketing of the evian¹ Natural Spring Water product line. Danone promotes evian to District of Columbia consumers as sustainable, natural, healthy, and environmentally friendly, despite the product line’s significant and ongoing contributions to plastic pollution, and despite the presence of microplastics and other harmful substances in the purportedly “natural” spring water. The Complaint is brought under the District of Columbia Consumer Protection Procedures Act on behalf of Plastic Pollution Coalition, the general public of the District of Columbia, and District of Columbia consumers.

INTRODUCTION

1. This is a consumer protection action concerning marketing representations by Defendant Danone Waters of America, LLC (“Danone” or “Defendant”) about evian Natural

¹ The Complaint uses “evian” in all lowercase, as is used throughout the evian branding.

Spring Water bottled water products (“the Products”).² The case is brought by Plastic Pollution Coalition, a project of Earth Island Institute (“PPC” or “Plaintiff”), a nonprofit public interest organization. PPC does not seek money damages; instead, PPC seeks an order declaring that Danone’s representations about its evian Products are unlawful under the Consumer Protection Procedures Act (“CPPA”), D.C. Code §§ 28-3901, *et seq.*, as well as an injunction that will end the deceptive advertising and marketing at issue.

2. This is not a class action and PPC will not seek class certification.

3. According to evian’s consumer-facing website, Danone began importing evian Products from France into the United States and Canada in 1978,³ and the evian brand is now sold in more than 140 countries.⁴

4. Danone markets and sells the evian Products throughout the District of Columbia.

5. On the Product packaging, Danone represents that the evian Products are “natural spring water.”

6. Via evian’s consumer-facing website, Danone represents itself as a company committed to “sustainability actions” through the use of “100% renewable energy” at its bottling site, and boasts “a history of sustainability,” pointing to a prior “carbon neutral” certification, despite no longer seeking the carbon neutral certification for its Products as of 2023.

7. The same website represents that Danone believes “[packaging] shouldn’t come at the expense of the environment” and states that it is “going all in on preserving and protecting” the environment.

² The Products include the evian everyday range of plastic water bottles in 330 mL, 500 mL, 750 mL, 1L, and 1.5L. *The Everyday Range*, evian, https://www.evian.com/en_us/natural-spring-water/bottled-water/ (last visited July 18, 2024). Discovery may reveal additional products or representations that fall within the scope of this Complaint. Plaintiff reserves the right to amend its Complaint to add any such additional products and/or representations.

³ *Our Story*, evian, https://www.evian.com/en_us/the-evian-story/ (last visited July 18, 2024).

⁴ *Id.*

8. The evian website further pledges to “make all our plastic bottles from 100% recycled PET by 2025.”⁵ Consistent with this promise, the Product packaging contains the claim “Made from 100% Recycled Plastic.”

9. The evian website and representations at issue in this action are accessible to consumers in the District of Columbia.

10. Scientific evidence shows plastic pollution, plastic particles, and plastic chemicals are damaging to human and environmental health.⁶

11. Scientific evidence shows that plastic water bottles shed plastic particles⁷ and leach plastic chemicals into the water they contain.⁸

12. Consumers within the District and across the country are increasingly aware that plastic pollution presents significant human health and environmental harms.

13. As a result of this growing awareness and concern regarding ingestion of microplastics and toxins associated with plastics, consumers within the District and across the country are increasingly interested in products that they believe are free from microplastics and toxins, and are therefore better for their health.

14. Microplastics in particular are a concern for consumers. In fact, in recent years, state governments have taken action “[i]n response to increasing concern about pervasive and

⁵ Polyethylene terephthalate (“PET”) is a type of plastic commonly used in bottled water products.

⁶ Every stage of the plastic life cycle harms human and environmental health. See Philip J Landrigan, et al., *The Minderoo-Monaco Commission on Plastics and Human Health*, Ann Global Health (March 21, 2023), <https://pubmed.ncbi.nlm.nih.gov/36969097/>.

⁷ Nearly a quarter million nanoplastic particles are shed from liter-sized water bottles into the water they hold, which people consume. See Naixin Qian, et al., *Rapid single-particle chemical imaging of nanoplastics by SRS microscopy*, Proceedings of the Nat’l Academy of Sci. (Jan. 8, 2024), <https://www.pnas.org/doi/10.1073/pnas.2300582121>.

⁸ Antimony and other chemicals may leach from plastic polyethylene terephthalate (PET) water bottles, especially at very high temperatures. See Ahmad R. Allafi, *The effect of temperature and storage time on the migration of antimony from polyethylene terephthalate (PET) into commercial bottled water in Kuwait*, Acta Biomed (Nov. 10, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7927525/>.

persistent pollution caused by microplastics.”⁹

15. Due to these concerns, many consumers are reevaluating their purchasing choices and the effects of those choices on the environment and their health.

16. Because of growing evidence and concerns about environmental and human health harms, consumers are willing to seek out, and pay more for, less harmful services or products. Consumers prefer to support companies that protect their health and share their values, including a commitment to reducing impact on the environment and protecting human health.

17. For these reasons, some of the companies responsible for plastic pollution advertise themselves as environmentally friendly, oftentimes successfully evading consumer perceptions that they are engaged in activities harmful to the environment and human health.

18. Companies that are among the largest plastic polluters, like Danone, are now publicly setting long-term goals to become more sustainable and move toward a circular economy, which would require a massive shift away from single-use plastic packaging.¹⁰

19. Nevertheless, many of these same companies, such as Danone, continue to rely on single-use plastic packaging, which becomes plastic pollution on an immense scale, sheds particles and chemicals into consumers’ bodies, and places continued stress on natural environments and human health.

⁹ See, e.g., *California Takes Decisive Action to Reduce Microplastics Pollution: State Adopts a First-in-Nation Approach to Protecting Ocean and Human Health*, California Ocean Protection Counsel, <https://opc.ca.gov/2022/02/california-takes-decisive-action-to-reduce-microplastics-pollution-state-adopts-a-first-in-nation-approach-to-protecting-ocean-and-human-health/> (last visited July 18, 2024).

¹⁰ In a circular economy, products and materials are kept in circulation through processes like maintenance, reuse, refurbishment, remanufacture, recycling, and composting. The plan is based on the principles of eliminating waste and pollution, circulating products and materials, and regenerating nature. See, e.g., *Circular economy introduction: What is a circular economy?*, Ellen MacArthur Foundation, <https://www.ellenmacarthurfoundation.org/topics/circular-economy-introduction/overview> (last visited July 18, 2024).

20. Plastic pollution is now so widespread that a 2019 study commissioned by World Wildlife Fund International estimated that the average person could be consuming upwards of 5 grams of plastic every week, which is equivalent to roughly the weight of an entire credit card, including more than 1,769 particles of plastic ingested from water alone. The study found plastic fibers in **94.4%** of tap water samples in the United States,¹¹ and an additional study found that many bottled water brands contain **double** the level of microplastics found in tap water.¹²

21. A study published in January 2024 found that because of the presence of nanoplastics—tiny microplastics that measure less than one micrometer—“there are 100 to 1,000 times as many pieces of plastic in a bottle of water as previously thought.”¹³

22. Microplastics have become increasingly pervasive, with recent studies finding microplastics in every human placenta and testicle studied,¹⁴ as well as in every blood sample taken.¹⁵

23. Once microplastics enter the bloodstream, they can spread all throughout the body. These microplastics put stress on the body’s immune system and have been found to increase the rate at which cancer cells spread.¹⁶ Microplastics and nanoplastics also have been linked to

¹¹ *You may be eating a credit card’s worth of plastic each week - study*, Reuters (June 11, 2019, 9:29 PM), <https://www.reuters.com/article/us-environment-plastic/you-may-be-eating-a-credit-cards-worth-of-plastic-each-week-study-idUSKCN1TD009>.

¹² David Common & Eric Szeto, *Microplastics found in 93% of bottled water tested in global study*, CBC News (Mar. 14, 2018, 6:00 PM), <https://www.cbc.ca/news/science/bottled-water-microplastics-1.4575045>.

¹³ Simon Ducroquet et al., *The Plastics We Breathe*, Wash. Post (June 2024), <https://www.washingtonpost.com/climate-environment/interactive/2024/microplastics-air-human-body-organs-spread/>; Shannon Osaka, *Here’s what you’re really swallowing when you drink bottled water*, Wash. Post (Jan. 9, 2024), <https://www.washingtonpost.com/climate-environment/2024/01/08/microplastics-nanoplastics-bottled-water-study/>.

¹⁴ Damian Carrington, *Microplastics found in every human testicle in study*, The Guardian (May 20, 2024, 10:34 AM), <https://www.theguardian.com/environment/article/2024/may/20/microplastics-human-testicles-study-sperm-counts>; Michael Haederle, *Microplastics in Every Human Placenta, New UNM Health Sciences Research Discovers*, UNM Health Sciences Newsroom (Feb. 20, 2024), <https://hsc.unm.edu/news/2024/02/hsc-newsroom-post-microplastics.html>.

¹⁵ *Microplastics Found in Human Hearts*, Plastic Pollution Coalition (Aug. 18, 2023), <https://www.plasticpollutioncoalition.org/blog/2023/8/18/microplastics-found-in-human-hearts>.

¹⁶ Ducroquet, et al., *supra* note 13 .

neurological and cardiovascular issues.¹⁷

24. Microplastics are now a top health concern for consumers.¹⁸

25. Widespread plastic pollution also aligns with plastic production trends: More than 10 billion metric tons of plastic have been produced globally to date, and plastic production has increased by more than 18,300 percent since the 1950s.¹⁹ More than 400 million metric tons of new plastic are produced globally each year, and that number is growing annually.²⁰

26. In the face of such high quantities of plastic production, recycling has proven overwhelmingly insufficient to address global plastic pollution. In fact, plastic recycling is rife with intractable problems. Plastic was never designed to be recycled, and with each round of recycling, virgin plastic and/or chemical additives must be incorporated to maintain the functionality of recycled plastic. As a result, bottles made from recycled plastic are often more toxic than bottles made from virgin plastic, and chemicals from recycled plastic easily leach into the beverages they contain.²¹ A mere **9%** of all plastic that has been produced since the 1950s has been recycled, 12% has been incinerated, and **79%** has ended up in landfills or the natural

¹⁷ See Vicki Contie, *Nanoplastics may help set the stage for Parkinson's risk*, NIH (Dec. 12, 2023), <https://www.nih.gov/news-events/nih-research-matters/nanoplastics-may-help-set-stage-parkinson-s-risk>; *A new study investigates the impact of microplastics in the brain*, George & Anne Ryan Inst. for Neuroscience (Aug. 4, 2023), <https://ryaninstitute.uri.edu/microplastics/>; Dr. Raffaele Marfella, et al., *Microplastics and Nanoplastics in Atheromas and Cardiovascular Events*, 390 *The New England J. of Medicine* 900-910 (Mar. 6, 2024), https://www.nejm.org/doi/full/10.1056/NEJMoa2309822?query=featured_home.

¹⁸ BfR *Consumer Monitor*, German Federal Institute for Risk Assessment (Feb. 2023), at 8-9, <https://www.bfr.bund.de/cm/364/bfr-consumer-monitor-02-2023.pdf>.

¹⁹ *The Truth Behind Trash: The scale and impact of the international trade in plastic waste*, Environmental Investigation Agency (Sept. 29, 2021), <https://eia-international.org/report/the-truth-behind-trash-the-scale-and-impact-of-the-international-trade-in-plastic-waste/>.

²⁰ *Drowning in Plastics - Marine Litter and Plastic Waste Vital Graphics*, United Nations Env't Program. (Oct. 21, 2021), <https://www.unep.org/resources/report/drowning-plastics-marine-litter-and-plastic-waste-vital-graphics>.

²¹ Spyridoula Gerassimidou, et al., *Unpacking the complexity of the PET drink bottles value chain: A chemicals perspective*, 430 *J. of Hazardous Materials*, 128410 (May 15, 2022), <https://www.sciencedirect.com/science/article/pii/S0304389422001984>.

environment.²² Indeed, *six times* more plastic is incinerated than is recycled in the United States.²³

27. Moreover, plastic products are inherently harmful to the environment. As a fossil fuel-based material, plastic production requires extracting, transporting, and refining fossil fuels. These processes often emit significant amounts of greenhouse gases into the atmosphere and exacerbate the already pronounced greenhouse gas effect. By 2050, plastic production and disposal could generate greenhouse-gas emissions equivalent to 615 coal plants annually and use up to 13% of Earth's remaining carbon budget.²⁴

28. Contrary to Danone's marketing representations to consumers, the company remains a major plastic polluter and thus is not a "sustainable" enterprise.

29. Danone's evian Product line is the subject of pending litigation in the Southern District of New York challenging the "carbon neutral" representations.²⁵ Danone also faces a consumer protection lawsuit in California over microplastics contained in evian's "natural spring water."²⁶

30. No reasonable consumer who sees Danone's representations would expect the steps that Danone claims to be taking to combat plastic pollution to be so insignificant relative to the scale at which its plastic pollution occurs, or for evian "natural spring water" to contain microplastics and other synthetic substances.

²² *Talking Trash: The Corporate Playbook of False Solutions to the Plastic Crisis*, Changing Markets Foundation. (Sept. 2020), https://talking-trash.com/wp-content/uploads/2020/09/TalkingTrash_FullReport.pdf. Plastic enters the natural world at a rate of 8 million tons per year, or approximately one garbage truck per minute. *Id.*

²³ Jan Dell, *Six Times More Plastic Waste is Burned in U.S. than is Recycled*, Plastic Pollution Coalition (Apr. 30, 2019), <https://www.plasticpollutioncoalition.org/blog/2019/4/29/six-times-more-plastic-waste-is-burned-in-us-than-is-recycled>.

²⁴ *Plastic & Climate: The Hidden Costs of a Plastic Planet*, Center for International Environmental Law (May 2019), <https://www.ciel.org/plasticandclimate/>. See also Luke Sussams, *Carbon Budgets Explained*, Carbon Tracker Initiative (Feb. 6, 2018), <https://carbontracker.org/carbon-budgets-explained/> ("A carbon budget is the cumulative amount of carbon dioxide (CO2) emissions permitted over a period of time to keep within a certain temperature threshold.")

²⁵ See *Dorris v. Danone Waters of America*, No. 22-cv-08717 (S.D.N.Y. Oct. 13, 2022).

²⁶ See *Dotson v. Danone Waters of America*, No. 2:24-cv-02445 (C.D. Cal. 2024).

31. Danone promotes the evian Products as “natural spring water” on the Danone and evian websites as well as on the evian Product packaging.

32. Microplastics and other harmful, man-made substances have been found in Danone’s evian Products.²⁷

33. By misrepresenting the nature and quality of its products and the nature of its underlying business practices, Danone is able to capture the growing market of D.C. consumers who are concerned about plastic pollution and seek to support businesses that implement practices that are environmentally sustainable and not harmful to human health.

34. Danone’s false and misleading representations and material omissions violate the CPPA.

35. Because Danone’s marketing and advertising tend to mislead and are deceptive about the true nature and quality of its products and business, PPC brings this deceptive advertising case on behalf of itself and the general public pursuant to the CPPA.

JURISDICTION AND VENUE

36. This Court has personal jurisdiction over the parties in this case. Plaintiff PPC, by filing this Complaint, consents to this Court having personal jurisdiction over it.

37. This Court has personal jurisdiction over Defendant Danone pursuant to D.C. Code Section 13-423(a)(1) because the claims herein arise from Danone “transacting . . . business in the District of Columbia.” Danone has sufficient minimum contacts with the District of Columbia to establish personal jurisdiction of this Court over it because, *inter alia*, Danone is engaged in deceptive schemes and acts directed at persons residing in, located in, or doing business in the District of Columbia, or otherwise purposefully avails itself of the laws of this District through its

²⁷ Sherri A. Mason, et al., *Synthetic Polymer Contamination in Bottled Water*, 6 *Frontiers in Chemistry* 1 (Sept. 11, 2018), DOI: 10.3389/fchem.2018.00407.

marketing and sales of its products and services in this District.

38. The beneficiaries of this action are District of Columbia consumers, and this case concerns representations made in the District of Columbia, to residents of the District of Columbia, and with the intent that residents would act upon those representations and purchase products within the District of Columbia.

39. The District has a strong interest in protecting its consumers through enforcement of the CPPA. The general public of the District has a corresponding interest in the vigorous enforcement of laws established to protect District consumers.

40. PPC, which brings this case on behalf of itself and D.C. consumers, has an interest in vindicating its rights as conferred by the CPPA related to misrepresentations made to those consumers. PPC has an interest in prosecuting its case within the District, which is where the alleged injuries occurred and where the relevant products were advertised for purchase and/or purchased.

41. This Court has subject matter jurisdiction over this action pursuant to D.C. Code §§ 28-3905(k)(1)(B), (k)(1)(C), (k)(1)(D), and (k)(2).

42. Venue is proper in this Court pursuant to D.C. Code Section 28-3905(k)(2) and because Danone directs its marketing at consumers within the District of Columbia, sells its evian Products in the District, and has caused injury in the District. PPC seeks to represent D.C. consumers and the general public of the District.

43. Pursuant to D.C. Code Section 28-3905(k)(2), this action shall be brought in the Superior Court of the District of Columbia.

44. This action seeks injunctive and declaratory relief but no money damages. Following the principals of non-aggregation set forth in *Snyder v. Harris*, 394 U.S. 332, 335

(1969), federal jurisdiction is not present, and this action is not subject to removal in federal court. *See, e.g., Inst. For Truth in Mktg. v. Total Health Network Corp.*, 321 F. Supp. 3d 344, 350 (D.D.C. 2018); *Organic Consumers Ass'n v. R.C. Bigelow, Inc.*, 314 F. Supp. 3d 344, 350 (D.D.C. 2018); *Animal Legal Defense Fund v. Hormel Foods Corp.*, 249 F. Supp. 3d 53, 59 (D.D.C. 2017).

PARTIES

45. Plaintiff PPC, a project of Earth Island Institute—a non-profit, public interest organization within the meaning of the CPPA (see D.C. Code Section 28-3901(a)(15))—is a non-profit communications and advocacy organization that collaborates with an expansive global alliance of organizations, businesses, and individuals to create a more just, equitable, regenerative world free of plastic pollution and its toxic impacts. Several PPC organizations are located in the D.C., including Environmental Working Group, Oceana, Greenpeace, Potomac Riverkeeper Network, National Audubon Society, PR3, and American Rivers, among others.

46. PPC is statutorily empowered pursuant to D.C. Code Section 28-3905(k)(1)(C) and (D) to represent the interests of District of Columbia consumers and to bring this action on their behalf.

47. PPC is based in Washington, D.C., and performs its work throughout the United States, including in the District of Columbia.

48. PPC is a project of Earth Island Institute, a nonprofit organization dedicated to informing the public about environmental harms and has worked, *inter alia*, to protect marine life, to confront plastic pollution, to preserve forests, to help indigenous leaders protect their sacred sites, and to restore wetlands.

49. PPC advocates for a transition away from single-use plastic and educates consumers, including those within the District of Columbia, on the environmental and health

impacts of single-use plastic across its entire lifecycle as well as alternatives to single-use plastic. PPC's efforts help consumers make informed choices when they shop , and works with its coalition members to advance and scale real systemic solutions to plastic pollution—including reuse, refill, repair, share, and regenerative solutions. PPC's website, public education, research, network building, and mobilization activities provide an important service to consumers, community activists, policymakers, and the public at large.

50. PPC has a strong interest in truth-in-advertising regarding environmental concerns, which align with the organization's mission of consumer advocacy and education.

51. PPC, through its work and otherwise, has a sufficient nexus to consumers of Danone's products to adequately represent their interests.

52. In May 2024, counsel for PPC facilitated testing of evian products per D.C. Code 28-3905(k)(1)(C) on PPC's behalf, *see infra* § II.A.

53. Defendant Danone Waters of America is one of the largest plastic-producing companies in the world and owns a variety of beverage brands, including evian® Natural Spring Water (“evian”), Volvic® Natural Spring Water (“Volvic”), and Badoit® Sparkling Natural Mineral Water (“Badoit”).

54. At all times mentioned herein, Danone Waters of America is a limited-liability company domiciled in Delaware with its principal place of business in Westchester County, New York.

55. Danone markets, sells, and distributes the Products in the District of Columbia.

56. Upon information and belief, Danone has caused harm to consumers and the general public of the District of Columbia.

**STATUTORY BACKGROUND GIVING RISE
TO PLAINTIFF’S CLAIM FOR RELIEF**

57. This action is brought under the District of Columbia Consumer Protection Procedures Act, D.C. Code Section 28-3901, *et seq.*

58. It is unlawful under the CPPA for “any person” to:

- “represent that goods or services have a source, . . . characteristics, . . . [or] benefits . . . that they do not have,” D.C. Code § 28-3904(a);
- “represent that goods or services are of a particular standard, quality, grade, style, or model, if in fact they are of another,” *id.* § 28-3904(d);
- “misrepresent as to a material fact which has a tendency to mislead,” *id.* § 28-3904(e);
- “fail to state a material fact if such failure tends to mislead,” *id.* § 28-3904(f);
- “use innuendo or ambiguity as to a material fact, which has a tendency to mislead,” *id.* § 28-3904(f-1);
- “advertise or offer goods or services . . . without the intent to sell them or without the intent to sell them as advertised or offered, *id.* § 28-3904(h); and
- “sell consumer goods in a condition or manner not consistent with that warranted . . . by operation or requirement of federal law,” *id.* § 28-3904(x).

59. The CPPA is the nation’s broadest consumer-protection statute, and is “applied liberally to promote its purpose.” D.C. Code Section 28-3901(c).

60. While the CPPA enumerates a number of specific unlawful trade practices, *see* D.C. Code § 28-3904, the enumeration is not exclusive. A main purpose of the CPPA is to “assure that a just mechanism exists to remedy all improper trade practices.” D.C. Code § 28-3901(b)(1); *see also, e.g., Dist. Cablevision Ltd. P’ship v. Bassin*, 828 A.2d 714, 722-23 (D.C.

2003); *Osbourne v. Capital City Mortg. Corp.*, 727 A.2d 322, 325-26 (D.C. 1999); *Atwater v. D.C. Dep't of Consumer & Reg. Affairs*, 566 A.2d 462, 465 (D.C. 1989).

61. A violation of the CPPA may occur regardless of “whether or not any consumer is in fact misled, deceived or damaged thereby.” *Id.* § 28-3904.

62. The CPPA “establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.” *Id.* § 28-3901(c). It “shall be construed and applied liberally to promote its purpose.” *Id.*

63. Under the CPPA, a “nonprofit organization may, on behalf of itself or any of its members, or on such behalf and on behalf of the general public, bring an action seeking relief from use of a trade practice in violation of a law of the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.” D.C. Code § 28-3905(k)(1)(C).

64. Additionally, a “public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action,” so long as the organization has a “sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” D.C. Code § 28-3905(k)(1)(D).

65. Plaintiff in this case is a nonprofit, public interest organization statutorily empowered pursuant to D.C. Code Section 28-3905(k)(1)(C)&(D) to represent the interests of District of Columbia consumers.

66. Because PPC is a public interest organization, it may act on behalf of the general public and bring any action that an individual consumer would be entitled to bring:

[A] public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice.

Id. § 28-3905(k)(1)(D)(i). Subparagraph (A) provides: “A consumer may bring an action seeking relief from the use of a trade practice in violation of a law of the District,” and pursuant to § 28-3901(c), placing misinformation into the D.C. marketplace is a trade practice in violation of the CPPA. Accordingly, PPC has standing to challenge Defendant’s misrepresentations about the Product in the District.

67. A public interest organization may act on behalf of the interests of consumers, *i.e.*, the general public of the District of Columbia, so long as the organization has “sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” *Id.* § 28-3905(k)(1)(D)(ii). As set forth in this Complaint, *see supra* ¶¶ 45-51, PPC is an organization dedicated to consumer advocacy and has previously represented consumers in similar actions under the CPPA. Plaintiff has a sufficient nexus to D.C. consumers to represent their interests adequately.

68. Alternatively, a nonprofit organization that has purchased or received the Product in order to test or evaluate its qualities, as PPC has done here, has standing under the CPPA to act on behalf of itself and the general public and bring an action as a “tester” organization:

A nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.

Id. § 28-3905(k)(1)(C).

69. This is not a class action, nor an action brought on behalf of any specific consumer, but an action brought by a Plaintiff on behalf of the general public, *i.e.*, D.C. consumers generally. No class certification will be requested.

70. The beneficiaries of this action are District of Columbia consumers, and the case concerns representations made in the District of Columbia, to residents of the District of Columbia, and with the intent that residents would act upon those representations and purchase products within the District of Columbia.

71. The District has a strong interest in protecting its consumers through enforcement of the CPPA. The general public of the District has a corresponding interest in the vigorous enforcement of laws established to protect District consumers. PPC, who has agreed to represent the interest of those consumers, has an interest in vindicating its rights conferred by the CPPA and related to misrepresentations made to those consumers.

72. PPC has an interest in prosecuting its case within the District, which is where the alleged injuries occurred and where the relevant products were advertised for purchase and, in fact, purchased.

73. This action does not seek damages. Instead, PPC seeks to end the unlawful conduct directed at D.C. consumers, *i.e.*, Defendant's false and deceptive labeling and marketing of the Product. Remedies available under the CPPA include "[a]n injunction against the use of the unlawful trade practice." *Id.* § 28-3905(k)(2)(D), (F). PPC also seeks declaratory relief in the form of an order holding Defendant's conduct to be unlawful in violation of the CPPA and requests its attorneys' fees and costs incurred in bringing this action.

**FACTS GIVING RISE
TO PLAINTIFF'S CLAIM FOR RELIEF**

74. Danone markets the evian Products throughout the District of Columbia through its website and product packaging, both of which are accessible to consumers within the District.

75. Danone sells its evian Products to consumers at retail locations throughout the District of Columbia, including at CVS, Walgreens, Whole Foods, Target, Safeway, Giant Food, and Wawa.²⁸

76. Through online advertising of the evian Products, accessible to consumers in the District, Danone markets the evian Products with sustainability and “natural” representations. The packaging of evian’s plastic bottles and the boxes containing its plastic bottles are also misleadingly labeled “natural.”

77. As described herein, *infra* ¶¶ 165-66, 193, consumer research demonstrates that sustainability and “natural” representations are material to D.C. consumers and lead consumers to believe that the production of the Product does not have a negative impact on the environment and that the water in the Product does not contain any unnatural substances, such as microplastics or BPA.

78. As explained herein, *infra* ¶¶ 174-88, contrary to Danone’s marketing and packaging design, evian Products produce significant plastic pollution, the production of plastic bottled water is inherently unsustainable, and the Products have been found to contain unnatural substances and harmful microplastics.

79. Danone’s advertising of the evian Products is false and misleading to D.C. consumers.

²⁸ *Where to Buy*, evian, https://www.evian.com/en_us/where-to-buy/ (last visited July 18, 2024).

I. Danone Falsely Represents Its evian Plastic Bottled Water as a “Sustainable” Product.

80. On its website, accessible to consumers within the District, Danone’s evian brand highlights its “Sustainability Actions” and tells consumers that it is “going all in on preserving and protecting” the environment.²⁹ Danone further emphasizes evian’s sustainability, pledging that the brand is “committed to preserving [the environment] through long-lasting sustainability initiatives.”³⁰



Our sustainability
actions

We owe everything to nature and we’re committed to preserving it through long-lasting sustainability initiatives and innovative partners. Our priority is to bring you refreshing, hydrating natural spring water with less environmental impact.

81. Throughout the evian website, Danone emphasizes this “commitment to sustainability” through representations about its sustainable actions, recyclability, and history of carbon neutrality.

82. Danone represents that it uses “100% renewable energy” at its bottling site, and despite the removal of its carbon-neutral certification,³¹ boasts “a history of sustainability” through carbon-neutral practices; these representations are currently being challenged in other courts.³²

²⁹ *Our Sustainability Actions*, evian, https://www.evian.com/en_us/sustainable-bottled-water/ (last visited July 18, 2024).

³⁰ *Evian—water the way nature intended.*, evian, https://www.evian.com/en_us (last visited July 18, 2024).

³¹ The evian brand was certified as carbon neutral by Carbon Trust from 2020 through 2023, when evian did not seek global recertification. *See infra* ¶ 93 ; *Climate impact*, evian, https://www.evian.com/en_us/sustainable-bottled-water/reducing-our-carbon-footprint/ (last visited July 18, 2024).

³² *Id.*

83. As part of its sustainability representations, Danone advertises its evian Products as “100% recyclable,” pledges to make all of its plastic bottles “from 100% recycled PET by 2025,”³³ and states that the Product packaging is “Made from 100% Recycled Plastic,” as depicted in the image below.



84. It is known, however, that recycled PET plastic introduces an even greater amount of chemical contamination into bottled beverages than virgin plastic.³⁴

85. Danone knows that consumers increasingly and deliberately seek out products and services from environmentally responsible companies.³⁵

86. Danone also knows that consumers often consider their own health when making purchasing decisions and want products that are better for their health.³⁶

³³ *Packaging and recycling*, evian, https://www.evian.com/en_us/sustainable-bottled-water/water-bottle-recycling-and-packaging/ (last visited July 18, 2024).

³⁴ Gerassimidou, et al., *supra* note 21 .

³⁵ See, e.g., *The Sustainability Imperative*, Nielsen IQ (Oct. 12, 2015), <https://nielseniq.com/global/en/insights/analysis/2015/the-sustainability-imperative-2/> (consumer survey finding that the majority of consumers seek to support sustainable business practices with their purchases and are more likely to buy products “from a company known for being environmentally friendly”); see also *Survey Reveals Consumers Prioritize Purchasing Sustainable Products and Desire Greater Transparency from Companies on Sustainability Progress*, PR Newswire (Nov. 15, 2023) <https://www.prnewswire.com/news-releases/survey-reveals-consumers-prioritize-purchasing-sustainable-products-and-desire-greater-transparency-from-companies-on-sustainability-progress-301988839.html>.

³⁶ *Shopping with Purpose: How American Consumers Prioritize Wellness and Sustainability*, Acosta Group (Nov. 14, 2023), <https://www.acosta.group/shopping-with-purpose-how-american-consumers-prioritize-wellness-and-sustainability/>.

87. Accordingly, Danone cultivates an environmentally friendly and healthy image to motivate environmentally and health conscious consumers to continue purchasing evian Products. Consumers drink water in order to stay healthy, and yet water coming from plastic bottles such as the evian Products is antithetical to protecting both human health and the natural resources from which this water is taken.

88. Danone purports to be an environmentally friendly, healthy, and “sustainable” company that is proactively working to prevent plastic pollution, despite its ongoing and significant contributions to the plastic pollution problem and its harms to human and planetary health.

A. Danone’s Sustainability and Recyclability Representations About Its Evian Products Are Misleading to Consumers.

89. Danone’s sustainability representations lead consumers to believe that evian Products are sustainable and healthy and will not have an overall negative effect on the environment and human health. Contrary to these representations, Danone, through its evian Product line, is a major source of plastic pollution and not a sustainable producer, and its evian Product line exposes people to plastic particles and chemicals that have a negative effect on human health.

1. Despite Danone’s Representations to D.C. Consumers, Recyclability and Use of Recycled Materials in Its Products Will Not Create a Circular Economy.

90. Danone makes generalized sustainability claims throughout the evian website, referencing its “sustainability actions” and commitment to protecting the environment.

91. Danone acknowledges that “mainstream bottling systems” use an unsustainable linear economy³⁷ and represents that its recycling efforts and use of rPET help to create a “circular economy” that mitigates the damages of its ongoing plastic pollution.

92. In addition to its general “sustainability” representations, Danone makes several specific claims regarding its recycling practices and the circular economy.

93. As a part of its sustainability messaging, evian’s website includes a page on climate impact, which touts evian’s purported “history of sustainability” and its “record of carbon neutral certification”—despite its decision *not* to seek renewal of certification by the Carbon Trust in 2023.³⁸

94. Danone represents that “25%-50% of each evian bottle is currently made from recycled plastic (rPET) and touts an ambitious goal of “100% rPET by 2025,”³⁹ which, at the time of this Complaint, means by next year.

95. At the time of this Complaint, Danone represents on the evian website’s “Circularity Dashboard” that 43% of its bottles use rPET globally, making it incredibly unlikely that evian will be able to reach its ambitious 2025 goal, as it previously has not increased its PET integration by more than 13% in one year.⁴⁰

96. The Products that are currently made from 100% rPET are packaged with the claim that they are “Made from 100% Recycled Plastic.”

97. Recycling and recycled plastic are not solutions to the global plastic pollution problem.

³⁷ *Packaging and Recycling*, *supra* note 33.

³⁸ *Climate Impact*, *supra* note 31.

³⁹ *Packaging and Recycling*, *supra* note 33.

⁴⁰ *Circularity Dashboard*, evian, https://www.evian.com/en_int/sustainability-dashboard/ (last visited July 18, 2024).

98. Recycled plastics degrade in quality and are typically only able to be recycled once. Recycled plastics, once their useful life is over, ultimately end up disposed in a landfill or by incineration.⁴¹

99. Recycled PET is “downcycled” to make lower-quality plastic and is typically mixed with new plastic or harmful chemicals to produce a new product. This process is expensive and requires large amounts of energy, water, equipment, and infrastructure.⁴²

100. Thus, despite Danone’s representations, using 100% rPET in all of its evian Products will not create a circular economy.

101. Moreover, recycled PET bottles are contaminated and leach chemicals into beverages in even greater quantities than virgin PET.⁴³

2. Danone’s Product Packaging Is Not as Recyclable as Danone Promises, Even for Consumers Who Try to Participate in the Circular Economy.

102. Danone makes claims about the recyclability of its evian Products, including that the bottles are “100% recyclable,” and directs consumers to recycle their bottle and cap to “keep plastic out of nature and in the circular economy where it belongs.”⁴⁴

103. Danone advances recycling as a straightforward solution to plastic pollution and represents that through recycling it can achieve a circular economy and eliminate non-recyclable waste.⁴⁵

104. Evian Products’ packaging states that the packaging is “100% recyclable.”

⁴¹ Hannah Ritchie, *FAQs on Plastics*, Our World in Data (Sept. 2, 2018), <https://ourworldindata.org/faq-on-plastics>.

⁴² *What Really Happens to Your Plastic “Recycling,”* Plastic Pollution Coalition (May 16, 2022), https://www.plasticpollutioncoalition.org/blog/2022/5/16/what-really-happens-to-your-plastic-recycling?utm_source=social+media.

⁴³ Gerassimidou, et al., *supra* note 21.

⁴⁴ *FAQ: Bottle Quality & Sustainability*, evian, https://www.evian.com/en_us/faqs/ (last visited July 18, 2024).

⁴⁵ *Packaging and Recycling*, *supra* note 33.

105. Such definitive “100% recyclable” claims have been found to be “misleading” and “unachievable” greenwashing claims.⁴⁶

106. Recent research conducted by Client Earth, Environmental Coalition on Standards, Eunomia Research & Consulting, and Zero Waste Europe found that, for most plastic bottles, recyclability claims were only partially true, as “a 100% collection and sortation rate would need to exist for these claims to be true.”⁴⁷

107. A significant portion of recyclable materials—regardless of whether consumers dispose of them correctly—end up in landfills or the natural environment.⁴⁸

108. One 2021 report “documented a recycling rate of 5 to 6% for post-consumer plastic waste in the U.S.”⁴⁹

109. Low rates of recycling mean that an immense amount of nominally “recyclable” plastic ends up in landfills or enters the natural environment.⁵⁰

110. The EPA has estimated that landfills in the United States received **27 million tons of plastic** in 2018.⁵¹

111. Danone greatly overstates the efficacy of recycling in addressing the plastics crisis as well as its own contributions to improving recycling rates.

⁴⁶ *Greenwashing PET Bottles: 100% Recyclable Claims “Misleading” and “Unachievable,” Says ClientEarth Report*, Food Ingredients First (Nov. 2, 2023), <https://www.foodingredientsfirst.com/news/greenwashing-pet-bottles-100-recyclable-claims-misleading-and-unachievable-says-clientearth-report.html>.

⁴⁷ *Id.*

⁴⁸ Livia Albeck-Ripka, *Your Recycling Gets Recycled, Right? Maybe, or Maybe Not*, The New York Times (May 29, 2018), <https://www.nytimes.com/2018/05/29/climate/recycling-landfills-plastic-papers.html>.

⁴⁹ Jan Dell, et al., *New Report Reveals that U.S. Plastics Recycling Rate Has Fallen to 5%-6%*, Beyond Plastics (May 4, 2022), <https://www.beyondplastics.org/press-releases/the-real-truth-about-plastics-recycling>.

⁵⁰ *Talking Trash*, *supra* note 22.

⁵¹ *Facts and Figures About Materials, Waste and Recycling*, *supra* note 45.

112. A report analyzing the plastic industry’s response to the plastic pollution crisis found that “[v]oluntary efforts from major plastic polluters consistently fail to meet the levels of ambition required to tackle the problem at the source.”⁵²

113. Companies such as Danone promote recycled materials and plastic recycling as a solution to the plastics pollution crisis, when, in reality, the solution requires reducing plastic production and consumption.

114. In a February 2020 report published by Greenpeace, marine biologist and director of the organization’s oceans campaign John Hocevar wrote, “Companies must move beyond the outdated, failed approach of promoting recycling as the solution to excessive plastic waste and pollution. . . . Instead of pretending that the trillions of throwaway plastic items produced each year will be recycled or composted, we must stop producing so many of them in the first place.”⁵³

115. Recycling is an extremely limited approach to curbing the vast amount of plastic pollution that is entering landfills and the natural environment.

116. Recent reporting has uncovered years of intentional deception by persons in the plastic industry with knowledge about the viability of recycling efforts. One plastic industry insider wrote in a speech in 1974, “There is serious doubt that [recycling plastic] can ever be made viable on an economic basis.”⁵⁴

117. Plastics were never designed to be recycled. “The future of plastics is in the trash can,” Lloyd Stouffer, editor of packaging industry magazine *Modern Packaging*, announced at the

⁵² *Talking Trash*, *supra* note 22.

⁵³ John Hocevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*, Greenpeace (Feb. 18, 2020), <https://www.greenpeace.org/usa/wp-content/uploads/2020/02/Greenpeace-Report-Circular-Claims-Fall-Flat.pdf>.

⁵⁴ Laura Sullivan, *How Big Oil Misled the Public Into Believing Plastic Would Be Recycled*, NPR (Sept. 11, 2020), <https://www.npr.org/2020/09/11/897692090/how-big-oil-misled-the-public-into-believing-plastic-would-be-recycled>.

1963 National Plastic Industry Conference organized by the industry trade association the Society of the Plastics Industry (now, the Plastics Industry Association).⁵⁵

118. The situation underlying these dismal forecasts has not improved over the decades. Larry Thomas, former president of the Society of the Plastics Industry told NPR in 2020: “If the public thinks that recycling is working, then they are not going to be as concerned about the environment.”⁵⁶

119. Despite the well-publicized shortcomings of recycling, Danone has consistently pushed recycling as the unqualified solution to the plastics crisis.

120. In marketing its products as “100% recyclable,” Danone’s messaging to consumers obfuscates these complexities and how they affect actual recycling rates, and in turn, the sustainability of Danone’s products.

121. Danone’s recycling claims aim to assuage consumers’ concerns about the environmental harms associated with the company’s business, convincing consumers that there are no significant environmental consequences associated with purchasing single-use plastic as long as they dispose of the material in a responsible manner.

122. Danone misleads consumers by overstating the capacity and ability of waste management companies and municipalities to recycle the large amount of PET bottle waste that companies such as Danone produce.

⁵⁵ Lloyd Stouffer, *Plastics Packaging: Today and Tomorrow*, 1963 National Plastics Conference, The Society of the Plastics Industry, Inc. (Nov. 1963), <https://discardstudies.files.wordpress.com/2014/07/stoffer-plastics-packaging-today-and-tomorrow-1963.pdf>.

⁵⁶ Laura Sullivan, *supra* note 54.

123. In reality, recycling rates are subject to various factors, including economic viability, the infrastructure and capacity of the applicable recycling facilities, and the inability of recycling facilities to recycle more novel forms of packaging, such as bottles with sleeves.⁵⁷

124. As previously noted, less than 30% of PET bottles were recycled in 2018 in the United States.⁵⁸

125. Even if consumers properly dispose of their plastic bottles, only a very small portion of plastic materials is actually recycled.⁵⁹

126. Recycled materials often are sent to a recycling facility where they are later sent to a landfill because the material is unsuitable for processing.⁶⁰

127. As it exists right now, the U.S. recycling infrastructure is incapable of keeping pace with Danone's incredibly high plastic production rates. In 2020, Danone's total global plastic usage was 716,500 metric tons, and in 2021, Danone's plastic usage increased to 750,000 metric tons.⁶¹

128. The economics of plastic production and recycling drive low recycling rates, and it is far cheaper to produce virgin plastic than to pay for the various processes required to recycle existing plastic.⁶²

⁵⁷ John Hocevar, *supra* note 53.

⁵⁸ *Facts and Figures about Materials, Waste and Recycling*, *supra* note 45.

⁵⁹ *Our Planet is Choking on Plastic*, UN Environment Programme, <https://www.unep.org/interactives/beat-plastic-pollution/> (last visited July 18, 2024).

⁶⁰ Laura Sullivan, *Recycling Plastic is Practically Impossible—and the Problem is Getting Worse*, NPR (Oct. 24, 2022), <https://www.npr.org/2022/10/24/1131131088/recycling-plastic-is-practically-impossible-and-the-problem-is-getting-worse>.

⁶¹ *Danone S.A.*, Ellen Macarthur Foundation, <https://www.ellenmacarthurfoundation.org/global-commitment-2021/signatory-reports/ppu/danone-sa> (last visited July 18, 2024); Constant Méheut & Catherine Porter, *French Food Giant Danone Sued Over Plastic Use Under Landmark Law*, New York Times (Jan. 9, 2023), <https://www.nytimes.com/2023/01/09/world/europe/danone-sued-plastic-use-france.html>.

⁶² Laura Sullivan, *supra* note 54.

129. In March 2019, the *New York Times* reported that hundreds of towns and cities throughout the United States cancelled their recycling programs, limited the types of materials they accepted, and/or agreed to substantial price increases to continue their recycling programs.⁶³

130. The increased recycling prices were largely the result of China's decision in January 2018 to ban plastics slated for recycling from entering the country; prior to that point, the United States had been exporting hundreds of thousands of tons of recyclable materials to China each year.⁶⁴ Prior to the ban, China imported recyclable materials from around the world and companies paid low wages to workers to sort the materials; however, contaminated and difficult-to-recycle materials made the process challenging and expensive, and polluted China's land and waterways.⁶⁵

131. Waste management companies and municipalities have since been struggling to find buyers for recyclable plastics, and it is often more economical for them to send recyclable plastics to landfills rather than pay to sort, clean, shred, and melt them for reuse.⁶⁶

132. More recently, the global COVID-19 pandemic decreased the cost of fossil fuels, exacerbating the difference in cost between virgin plastic and recycled plastic.

133. A market analysis by the Independent Commodity Intelligence Services estimated that as of October 2020, it was approximately 83% to 93% more expensive to use recycled bottle-grade plastic than to produce it new.⁶⁷

⁶³ Michael Corkery, *As Costs Skyrocket, More U.S. Cities Stop Recycling*, *The New York Times* (Mar. 16, 2019), <https://www.nytimes.com/2019/03/16/business/local-recycling-costs.html>.

⁶⁴ *Id.*; Christopher Joyce, *Where Will Your Plastic Trash Go Now That China Doesn't Want It?*, NPR (Mar. 13, 2019), <https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-go-now-that-china-doesnt-want-it>; John Hocevar, *supra* note 53.

⁶⁵ *Id.*

⁶⁶ Alana Semuels, *Is This the End of Recycling?*, *The Atlantic* (Mar. 5, 2019), <https://www.theatlantic.com/technology/archive/2019/03/china-has-stopped-accepting-our-trash/584131/>.

⁶⁷ Joe Brock, *Special Report: Plastic pandemic – COVID-19 trashed the recycling dream*, Reuters (Oct. 5, 2020), <https://www.reuters.com/article/health-coronavirus-plastic-recycling-spe-idUSKBN26Q1LO>.

134. This stands in contrast to Danone’s representations that recycling PET bottles and creating bottles from rPET is a clear-cut solution to the plastics crisis.

135. Danone misleads consumers into believing that they are participating in a circular economy by purchasing and then recycling evian plastic water bottles, when a circular economy that recycles the amount of plastic bottles distributed by Defendant neither currently exists, nor is it achievable.

3. Danone Significantly Contributes to the Plastics Pollution Problem and Is Not a Sustainable Company.

136. Contrary to Danone’s representations, the company is far from what consumers understand to be a sustainable and environmentally friendly business.

137. Danone is one of the top ten global corporate plastic polluters of 2023.⁶⁸

138. Danone’s total volume of plastic packaging increased in 2022⁶⁹ and a study published in April 2024 found that Danone was one of the top three companies responsible for plastic pollution across six continents.⁷⁰

139. Danone’s immense plastic waste contribution is damaging to the environment and human health.

140. The lifecycle of plastic, from fossil fuel extraction, refining, storage, and transportation through plastic production, shipping, use, and disposal, presents serious risks to human health and exposure to the various toxic substances used during these phases contributes to cancer, neurotoxicity, reproductive issues, endocrine disruption, and genetic problems.⁷¹

⁶⁸ *Brand Audit Report 2023, Break Free from Plastic*, https://drive.google.com/file/d/1YFyfRv4m_viZZXa8b1HdpucDX3WEwJzv/view (last visited July 18, 2024).

⁶⁹ Peggy Hollinger, *Danone Lawsuit Could Be Test Case for New War on Plastics*, Financial Times (Jan. 18, 2023), <https://www.ft.com/content/5a575e20-2d49-475e-9936-47c4bf641678>.

⁷⁰ Shannon Osaka, *A global study just revealed the world’s biggest known plastic polluters*, The Washington Post (Apr. 24, 2024), <https://www.washingtonpost.com/climate-environment/2024/04/24/plastic-pollution-companies-responsible/>.

⁷¹ *Talking Trash*, *supra* note 22.

141. The chemicals found in plastics are particularly dangerous to unborn babies, infants, and children with less developed immune systems and bodies that are more easily disrupted by exposure to these chemicals.⁷²

142. Health problems linked to the harmful chemicals found in plastics have cost the United States healthcare system \$250 billion in increased costs in 2018 alone.⁷³

143. Plastic pollution also presents an unprecedented crisis for wildlife throughout the world. Many animals, especially marine life, ingest plastic materials that enter the natural environment, wreaking havoc on their digestive systems and overall health. Plastic, when ingested, can cause wildlife to choke, sustain internal injuries, suffer from starvation, and experience reproductive issues, all of which can lead to death.⁷⁴

144. Furthermore, plastics have carbon-intensive and water-intensive life cycles.⁷⁵

145. Recycling plastic requires significant amounts of freshwater for washing.

146. Plastic production requires fossil fuel extraction and distillation; plastic products themselves are constituted from fossil fuels, and after production must be transported to market, further increasing the carbon footprint of plastic use.⁷⁶

147. Additionally, dumping, incinerating, recycling, or composting certain plastics all release carbon dioxide (CO₂), a powerful greenhouse gas.⁷⁷

⁷² *From Womb to World, Plastics Harm Babies: How to Protect Their Health*, Plastic Pollution Coalition (May 12, 2024), <https://www.plasticpollutioncoalition.org/blog/2024/5/12/from-womb-to-world-plastics-harm-babies>.

⁷³ *Chemicals in Plastics Added \$250 Billion to U.S. Health Care Costs in One Year*, Plastic Pollution Coalition (Jan. 11, 2024), <https://www.plasticpollutioncoalition.org/blog/2024/1/11/chemicals-in-plastics-added-250-billion-to-u-s-health-care-costs-in-one-year>.

⁷⁴ *Ocean Plastics Pollution*, Center for Biological Diversity, https://www.biologicaldiversity.org/campaigns/ocean_plastics/ (last visited July 18, 2024).

⁷⁵ *Plastic's carbon footprint: Researchers conduct first global assessment of the life cycle greenhouse gas emissions from plastics*, Science Daily (Apr. 15, 2019), <https://www.sciencedaily.com/releases/2019/04/190415144004.htm>.

⁷⁶ *Id.*

⁷⁷ *Id.*

148. The plastics industry’s reliance on limited and environmentally harmful fossil fuels precludes these companies, including Danone, from being sustainable, particularly at the large scale that Danone distributes plastic products.

149. Danone is not a sustainable company due to the very nature of the bottled water industry and misleads D.C. consumers in presenting itself as such.

B. Danone’s Sustainability and Recyclability Representations Are Material to Consumers.

150. Danone’s sustainability and recyclability representations are material to consumers who care about making environmentally sound and health conscious purchasing decisions and who believe that they can lessen their environmental impact by purchasing bottled water from a “sustainable” company and recycling the Products’ packaging.

151. A survey of 9,000 of consumers across North America, South America, and Europe published in 2023 found that the majority of consumers look for information about recyclability or sustainability on product packaging.⁷⁸ The same survey also found that 79% of consumers look for products in sustainable packaging and 82% are likely to purchase a product based on recyclable packaging claims.⁷⁹

152. A 2020 McKinsey survey of United States consumers found that “43[%] of consumers ... say environmental impact is an extremely or very important packaging characteristic when making purchasing decisions.”⁸⁰

⁷⁸ *Buying Green Report*, Trivium Packaging at 3, 9, 15 (2023), <https://www.triviumpackaging.com/media/pe5hfxsp/2023buyinggreenreport.pdf>.

⁷⁹ *Id.*

⁸⁰ David Feber et al., *Sustainability in Packaging: US Survey Insights* (Apr. 26, 2023), <https://www.mckinsey.com/industries/packaging-and-paper/our-insights/sustainability-in-packaging-us-survey-insights>.

153. The same McKinsey survey found that most consumers are willing to pay more for sustainable packaging, that 4% to 7% of consumers are willing to pay a premium well above 10%, and yet “[m]ost consumers do not have a strong understanding of which packaging types are more sustainable.”⁸¹

154. A 2019 study conducted by Coleman Parkes Research on behalf of Accenture surveyed 1,500 consumers in seventeen cities throughout the United States and found that 47% of consumers surveyed expressed a desire to conduct business with retailers that are environmentally conscious.⁸²

155. The desire for sustainable products is especially pronounced among younger consumers; a study from the International Trademark Association from 2018 found that 57% of internet users ages 18 to 23 were seeking environmentally sustainable products.⁸³

156. Danone’s marketing of the Products provides consumers with general and unqualified sustainability claims and misrepresents the recyclability of the Products’ packaging, which is misleading to consumers.

157. For example, Danone, through the evian brand, represents that it is “going all in on preserving and protecting” the environment and is on a “sustainability journey” that is focused on “packaging and recycling,” “source protection,” and climate impact.”⁸⁴

158. The company also alleges that “[it] believe[s] [its packaging] shouldn’t come at the expense of the environment.”⁸⁵

⁸¹ *Id.*

⁸² Lucy Koch, *Sustainability Is Factoring into 2019 Holiday Purchases*, eMarketer (Oct. 14, 2019), <https://www.emarketer.com/content/sustainability-is-factoring-into-2019-holiday-purchases>.

⁸³ *Id.*

⁸⁴ *Our Sustainability Actions*, *supra* note 29.

⁸⁵ *Packaging and Recycling*, *supra* note 33.

159. Danone represents that it is “committed to protecting and nourishing the health of our planet and its people” and is doing its part “to accelerate the transition from a linear to a circular economy of sustainable packaging” by eliminating unnecessary packaging and innovating packaging to “ensure it can be recycled and safely reused again and again so it remains a part of the circular economy and never becomes waste and pollution.”⁸⁶

160. Danone states its “sustainability initiatives will put [it] on track to reach [its] 2025 goal” of “becom[ing] a circular brand and transform[ing] our packaging to make all our plastic bottles from 100% recycled PET.”⁸⁷ As of the time of this Complaint, midway through 2024, only 43% of evian Product packaging is made from recycled materials.⁸⁸

161. Danone represents to consumers through the evian Products’ branding and marketing that it is a company that it is operating sustainably.

162. Danone’s false and misleading representations about its sustainability practices and the healthiness of its products are material to consumers.

163. Consumers care deeply about environmental issues and are more likely to purchase products that they perceive to be sustainable.⁸⁹

164. Danone’s business practices fall far short of what consumers would expect from a “sustainable” company. Its advertising strategies mislead consumers into believing that Danone prioritizes protection of the environment and natural resources, capturing a growing class of consumers who wish to support environmentally sustainable companies.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Circularity Dashboard, supra* note 40.

⁸⁹ *See, e.g., The Sustainability Imperative, supra* note 35.

165. Moreover, federal guidance and consumer research show that Danone’s sustainability representations suggest to consumers that its Products are created in accordance with high environmental standards.

166. The Federal Trade Commission (“FTC”) has determined that unqualified general environmental benefit claims such as “sustainable” “imply certain specific environmental benefits.”⁹⁰ For that reason, the FTC has warned companies not to use unqualified claims such as “sustainable” due to its determination that “it is highly unlikely that they can substantiate all reasonable interpretations of these claims.”⁹¹

167. As demonstrated *supra* ¶¶ 136-149, Danone is unable to substantiate its claims that it is a “sustainable” company dedicated to “protecting and nourishing the health of our planet,” thereby misleading the many consumers who attempt to make purchasing decisions in line with their desire to be more environmentally conscious.

II. Danone Falsely Represents Its Evian Products as “Natural” When the Products Contain Microplastics and Other Harmful Substances.

168. Danone advertises the evian Products as “natural spring water,” straight from nature and without any additives, as depicted in the image below, from its website:



⁹⁰ *FTC Sends Warning Letters to Companies Regarding Diamond Ad Disclosures*, Federal Trade Commission (Apr. 2, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-sends-warning-letters-companies-regarding-diamond-ad>; *see also* FTC Green Guides, 16 C.F.R. § 260.4(b) (2012).

⁹¹ *Id.*

169. Directly on the evian Product packaging, Danone represents that the evian Products contain “natural spring water,” as depicted in the images below:



170. The evian website boasts that its “natural” water is “filtered by nature” and contains no additives or enhancements.⁹²

171. Danone further represents that “evian natural spring water is truly a product of nature” and “water the way nature intended,” as depicted below:

⁹² *Our Water*, evian, https://www.evian.com/en_us/what-is-spring-water/ (last visited July 18, 2024).



15-year natural filtration process

evian natural spring water's unique, constant mineral composition, created over years of slow filtration through underground rock reflects the uniqueness of the territory from which it originates. evian natural spring water is truly a product of nature.

OUR PRODUCTS OUR WATER OUR SUSTAINABILITY ACTIONS  OUR STORY WHERE TO BUY USA ▼

evian - water the way nature intended.

It's a uniquely sourced spring water that's always refreshing and naturally hydrating, with nothing added for taste or enhanced with extras - so you can reach your natural peak.



172. Danone touts a goal that its “focus is to raise public awareness of healthy hydration” and states that “natural spring water” is especially good for young children.⁹³

173. Danone’s website representations similarly stress the importance of making “healthier drinking choices like water” for expectant and new mothers, infants, children, and for physical activity.⁹⁴

⁹³Hydration for: children, evian, https://www.evian.com/en_us/natural-hydration/ (last visited July 18, 2024).

⁹⁴ *Id.*

A. Danone’s Representations That the Evian Products Are “Natural” Are Misleading to Consumers.

174. Contrary to Danone’s on-label and online representations, consumers are not getting solely “natural” spring water, as that term is understood by consumers, when they purchase evian Products.

175. In reality, PPC purchased the Product and had it tested by an independent laboratory, which found that the water in the Product contained microplastics and the Product packaging contained BPA.⁹⁵

176. PPC’s testing confirmed the results of a 2022 study, which conducted testing on nine brands of bottled water and found that seven of the brands, including evian, contained microplastics.⁹⁶

177. Similarly, a 2018 study by Orb Media tested eleven brands of bottled water, including evian, and found that 93% of the bottles tested contained microplastics.⁹⁷

178. In January 2024, researchers from Columbia University and Rutgers University found roughly 240,000 detectable plastic fragments in a typical liter of bottled water, 10% of which were microplastics, measuring between five millimeters and one micrometer in size, and 90% of which were nanoplastics, which measure less than one micrometer in size.⁹⁸

179. Microplastics are any plastic particles less than five millimeters in length that come from larger plastic debris that degrades into smaller pieces over time.⁹⁹

⁹⁵ *Parverio Laboratories Microplastic Summary – Evian* (May 2024) (on file with Counsel); *Anresco Laboratories Evian Bottled Water – Container Testing* (May 2024) (on file with Counsel).

⁹⁶ *78% of Bottled Water Analysed Contaminated by Microplastics, Finds Study*, Food and Drink Technology (Aug. 4, 2022), <https://www.foodanddrinktechnology.com/news/43456/78-of-bottled-waters-analysed-contaminated-by-microplastics-finds-study/>.

⁹⁷ Common, *supra* note 12.

⁹⁸ James Doubek, *Researchers Find a Massive Number of Plastic Particles in Bottled Water*, NPR (Jan. 10, 2024 11:59 AM), <https://www.npr.org/2024/01/10/1223730333/bottled-water-plastic-microplastic-nanoplastic-study>.

⁹⁹ Vedant Sharma, *Microplastic: A Potentially Silent But Deadly Killer*, Pre-Collegiate Global Health Review (Oct. 14, 2021), <https://www.pghr.org/post/microplastic-a-potentially-silent-but-deadly-killer>.

180. Microplastics are not naturally occurring; they are synthetic materials with high polymer content that enter bottled water through the manufacturing process, leach into the water from the plastic bottle, or through the motion of twisting a bottle cap on and off.¹⁰⁰

181. Microplastics have been shown to leach hazardous chemicals, and have been linked to cancer, weakened immune systems, endocrine and reproductive problems, nervous system problems, hearing loss, and metabolic disturbances, among other harmful health effects.¹⁰¹

182. These hazardous substances are particularly harmful to “pregnant people . . . and in babies, children, and youth whose hormone systems are [] extremely active to guide healthy growth and development.”¹⁰²

183. Microplastics, due to their high surface-to-volume ratio as compared to larger plastics, promote the leaching of chemicals found in plastic into drinking water.¹⁰³

184. BPA is a manmade industrial chemical used in plastic packaging and is an endocrine disruptor, which impacts development in babies and young children and upsets normal adult biological functions, and is linked to serious health problems, including cancer.¹⁰⁴

¹⁰⁰ JR Cullpepper, *What’s in Your Water Bottle? Concerns About Microplastics in Caps*, EWG (Oct. 3, 2023), <https://www.ewg.org/news-insights/news/2023/10/whats-your-water-bottle-concerns-about-microplastics-caps>.

¹⁰¹ Sharma, *supra* note 99; Yage Li, et al., *Leaching of chemicals from microplastics: A review of chemical types, leaching mechanisms and influencing factors*, *Sci. Total Env’t* (Oct. 15, 2023), <https://pubmed.ncbi.nlm.nih.gov/37820817/>.

¹⁰² *From Womb to World, Plastics Harm Babies: How to Protect Their Health*, *supra* note 72.

¹⁰³ Martin Wagner et al., *State of the Science on Plastic Chemicals*, *PlastChem* at 65, <https://plastchem-project.org/> (last visited July 18, 2024).

¹⁰⁴ Perrin Ireland, *4 Ways to Avoid Toxic Chemicals in Food Packaging*, NRDC (Aug. 12, 2015), <https://www.nrdc.org/stories/4-ways-avoid-toxic-chemicals-food-packaging>; Seachrist, D.D., et al., *A review of the carcinogenic potential of bisphenol A*, *Reproductive Toxicology* (October 19, 2015), <https://pubmed.ncbi.nlm.nih.gov/26493093/>.

185. Plastic PET bottles, like those used by Danone in the Products, have been known to leach chemicals from the bottles into the liquid inside, including BPA. The leaching is more likely to occur in bottles made with rPET, like the Product, or exposed to warmth or sunlight.¹⁰⁵

186. Water contaminated with microplastics or BPA is not “natural.”

187. Indeed, reasonable consumers would not consider a bottled water product containing water contaminated with microplastics and BPA to be “natural” or “water the way nature intended,” as the evian Products are represented.

188. Representing the evian Products as “natural” when they contain microplastics and BPA is misleading to the reasonable D.C. consumer, who would not expect to find these harmful substances in bottles of “natural spring water.”

B. Danone’s Representations About “Natural Spring Water” in Its Evian Products Are Material to Consumers.

189. Consumers care about whether the products they purchase and consume contain harmful microplastics or other toxic chemicals and substances.

190. Danone’s representations that its evian Products are “natural” spring water are “material fact[s] which ha[ve] a tendency to mislead” within the meaning of the CPPA. D.C. Code § 28-3904(e).

191. The FDA has not established a formal definition of the term “natural.”¹⁰⁶

¹⁰⁵ *Study Finds Hundreds of Thousands of Plastic Particles in Bottled Water*, Plastic Pollution Coalition (Jan. 10, 2024), <https://www.plasticpollutioncoalition.org/blog/2024/1/10/study-finds-hundreds-of-thousands-of-plastic-particles-in-bottled-water>.

¹⁰⁶ *Use of the Term Natural on Food Labeling*, U.S. Food & Drug Admin. (Oct. 22, 2018), <https://www.fda.gov/food/food-labeling-nutrition/use-term-natural-food-labeling>.

192. Consumers are paying more attention to the ingredients found in food and beverage products, driven by concerns about artificial ingredients and chemicals and their potential harms to human health.¹⁰⁷

193. A 2023 survey of U.S. consumers found that 60% of Americans are reading ingredient labels more closely, and 69% reported that they care about how natural their food is.¹⁰⁸

194. Consumers seeking “natural” products are often willing to pay more for these products.¹⁰⁹

195. Consumers do not expect harmful, synthetic microplastics or BPA to be found in a product labeled “natural spring water.”

196. In fact, consumers tend to turn to bottled water for health reasons. For example, “[p]ast studies have [] revealed that college students consumed a lot of bottled water because they perceived bottled water as providing additional health benefits relative to tap water.”¹¹⁰

197. Thus, Danone’s marketing of the evian Products as containing “natural spring water,” when the Products have been found to contain unnatural and harmful substances, “misrepresent[s] . . . material fact[s] which ha[ve] a tendency to mislead.” D.C. Code § 28-3904(e).

CAUSE OF ACTION

Violations of The District of Columbia Consumer Protection Procedures Act

198. Pursuant to D.C. Code Sections 28-3905(k)(1) and 28-3905(k)(2), Plaintiff PPC

¹⁰⁷ Will Cowling, *Consumers Want Colors and Flavors They Deem Green and Clean*, Food & Beverage Insider (Oct. 21, 2020), <https://www.foodbeverageinsider.com/market-trends-analysis/consumers-want-colors-and-flavors-they-deem-green-and-clean>.

¹⁰⁸ Christine Zulkosky, *What Do Americans Think ‘Natural’ Foods Are?*, Food Institute (Aug. 28, 2023), <https://foodinstitute.com/focus/what-do-americans-think-natural-foods-are/>.

¹⁰⁹ Allison Rittman, *Consumers Seek Trust and Reliability in “Natural” Labels*, Prepared Foods (June 13, 2023), <https://www.preparedfoods.com/articles/128258-consumers-seek-trust-and-reliability-in-natural-labels>.

¹¹⁰ Carolyn A. Lin & Xiaowen Xu., *Exploring Bottled Water Purchase Intention via Trust in Advertising, Product Knowledge, Consumer Beliefs and Theory of Reasoned Action*, 10 Social Sci. 295 (2021), <https://www.mdpi.com/2076-0760/10/8/295>.

brings this Count against Danone on behalf of itself, its members, and the general public of the District of Columbia, for Danone's violations of the CPPA, D.C. Code Section 28-3901, *et seq.*

199. Plaintiff incorporates by reference all the allegations in the preceding paragraphs of this Complaint.

200. Danone represents itself as a "sustainable" company with natural products and recyclable packaging, while significantly contributing to plastic pollution and selling Products that contain harmful substances.

201. Danone represents the evian Product line as "natural spring water" when the Products contain synthetic microplastics and BPA.

202. Danone's advertising misrepresents, tends to mislead, and omits facts regarding the characteristics, standard, quality, and grade of its business practices and the products and services it sells.

203. Danone's goods, services, and business practices lack the characteristics, benefits, standards, qualities, or grades that Danone states and implies in its advertisements.

204. Danone knowingly did not sell its goods and services as advertised.

205. The facts, as alleged above, demonstrate that Danone has violated the CPPA. Specifically, Danone has violated D.C. Code Section 28-3904, which makes it an unlawful trade practice to:

- (a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; . . .
- (d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;

- (e) misrepresent as to a material fact which has a tendency to mislead; . . .
- (f) fail to state a material fact if such failure tends to mislead;
- (f-1) [u]se innuendo or ambiguity as to a material fact, which has a tendency to mislead; . . . [or]
- (h) advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

206. The CPPA makes such conduct an unlawful trade practice “whether or not any consumer is in fact misled, deceived or damaged thereby.” D.C. Code § 28-3904.

207. PPC need not show proof of deception to succeed on its CPPA claim; nevertheless, upon information and belief, D.C. consumers in fact have been, and are being, deceived.

208. PPC has a sufficient nexus to consumers of Danone’s evian Products and services to adequately represent the interests of those consumers.

209. Because Danone misrepresents the characteristics and benefits of the evian Products it provides; misrepresents the standard, quality, and grade of the Products; and advertises its Products and services without the intent to provide them as advertised, Danone’s marketing of its services violates D.C. Code Sections 28-3904(a), (d), (e), (f), (f-1), and (h).

210. Danone is a “person” within the meaning of D.C. Code Section 28-3901(a)(1), a merchant under Section 28-3901(a)(3), and provides “goods and services” within the meaning of Section 28-3901(a)(7).

211. Any consumer has the right to bring an action for redress of Danone’s unlawful behavior, *see* D.C. Code § 28-3905(k)(1)(A), and the statute does not limit consumer plaintiffs according to whether they purchased the product at issue. Nevertheless, as alleged in this Complaint, the Products are marketed and sold in the District, and consumers within the District

have obtained these Products under the misrepresentations made by Danone. Therefore, a variety of purchasing and non-purchasing consumers could bring an action against Danone based on the misrepresentations, misleading statements, and material omissions listed in this Complaint.

212. Pursuant to D.C. Code Section 28-3905(k)(1)(D)(i), “a public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice.”

213. The only limitation on this power of a public interest organization to act on behalf of consumers is that the public interest organization must have “sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” D.C. Code § 28-3905(k)(1)(D)(ii). As set forth in this Complaint, *see supra* ¶¶ 45-51, PPC advocates and educates consumers, including consumers in the District of Columbia, in the arena of plastic pollution and exposure. In addition, PPC has retained the undersigned competent counsel, who have significant experience in litigating under the CPPA, to pursue this action.

214. Through Section 28-3905(k)(1)(C), the CPPA explicitly allows nonprofit organizations acting on behalf of the general public to establish “tester” standing.

215. PPC is a “person” within the meaning of D.C. Code Section 28-3901(a)(1) and a “public interest organization” within the meaning of D.C. Code Section 28-3901(a)(15).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff PPC respectfully prays for judgment against Defendant Danone Waters of America and requests the following relief:

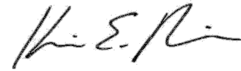
A. A declaration that Danone’s marketing of its evian Products is in violation of the

CPPA;

- B. An order enjoining Danone's conduct found to be in violation of the CPPA;
- C. Plaintiff's costs and disbursements, including reasonable attorneys' fees and expert fees, and prejudgment interest at the maximum rate allowable by law; and
- D. Such other and further relief as the Court may deem just and proper.

DATED: July 19, 2024

RICHMAN LAW AND POLICY



Kim E. Richman (D.C. Bar No. 1022978)
1 Bridge Street, Suite 83
Irvington, NY 10533
Telephone: (914) 693-2018
krichman@richmanlawpolicy.com

Attorney for Plaintiff