SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

PLASTIC POLLUTION COALITION *Plaintiff,* **v.** **DANONE WATERS OF AMERICA, LLC** *Defendant.*	)	Case No. 2024-CAB-004562 Honorable Leslie A. Meek

ORDER DENYING DANONE WATERS OF AMERICA, LLC'S MOTION TO DISMISS THE COMPLAINT

This matter is before the Court on *Danone Waters of America, LLC's Motion to Dismiss the Complaint* ("Motion to Dismiss") filed by Defendant Danone Waters of America, LLC ("Defendant"") on October 28, 2024. Plaintiff Plastic Pollution Coalition ("Plaintiff") filed *Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Dismiss* ("Opposition") on December 13, 2024. On January 17, 2025, Defendant filed *Davone Waters of America, LLC's Reply in Further Support of its Motion to Dismiss the Complaint* ("Reply").

I. Background

a. Complaint

Plaintiff filed its *Complaint* ("Complaint") against Defendant on July 29, 2024, for violations of the District of Columbia Consumer Protection Procedures Act ("CPPA"), D.C. Code § 28-3901, *et seq*. Compl. ¶ 1. Plaintiff[1] asserts Danone imports evian brand bottled water from France into the United States and markets and sells evian bottled water in the District of Columbia.

[1] When considering a motion to dismiss, courts "accept all the allegations in the complaint as true" and "construe all facts and inferences in favor of the plaintiff." *Greenpeace, Inc. v. Dow Chem. Co.*, 97 A.3d 1053, 1059 (D.C. 2014).

Id. ¶¶ 3, 4. Plaintiff asserts that the evian product packing represents that evian products are "natural spring water" and that the bottles are "[m]ade from 100% Plastic." *Id.* ¶¶ 5, 8. Furthermore, the Complaint alleges that evian's consumer-facing website makes a series of representations accessible to D.C. consumers:

- That Defendant is "committed to 'sustainability actions' through the use of '100% renewable energy'";
- That Defendant "boasts a 'history of sustainability,' pointing to a prior 'carbon neutral' certification, despite no longer seeking a carbon neutral certification for its [p]roducts as of 2023";
- That Defendant "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"; and
- That Defendant "further pledges to 'make all our plastic bottles from 100% recycled PET[2] by 2025."

Id. ¶¶ 6–9.

In filing its Complaint, Plaintiff alleges that Defendant's advertising of evian products is false and misleading to D.C. consumers. *Id.* ¶ 79. Specifically, Plaintiff alleges that while Defendant's marketing and package design make representations as to the "sustainability" and "natural" quality of evian products—Plaintiff alleges that "evian [p]roducts produce signfiicnat plastic pollution"; that "the production of plastic bottled water is inherently unsustainable"; and that the evian products "have been found to contain unnatural substances and harmful microplastics." *Id.* ¶¶ 76, 78. According to Plaintiff, because Defendant's misrepresents (1) its

[2] "Polyethylene terephthalate [ ] is a type of plastic commonly used in bottled water products." Comp. ¶ 8 n. 5.

business practices as "sustainable" and (2) its products as "natural spring water" despite containing synthetic microplastics and BPA,[3] Defendant's violate provisions of the CPPA, specifically D.C. Code § 28-3904(a), (d), (e), (f), (f-1), and (h). *Id.* ¶¶ 200–01, 09. Plaintiff thus brings this action on behalf of "consumers within the District [that] have obtained [evian] [p]roducts under the misrepresentations made by [Defendant.]. *Id.* ¶ 211.

b. Motion to Dismiss and Related Pleadings

Defendant brings this Motion to Dismiss raising three arguments that:

(1) The "Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 1, *et seq.* ("FDCA") preempts the portion of [Plaintiff]'s CPPA claim predicated on challenges to the label term 'natural spring water' and allegations that the [p]roduct contains unsafe levels of microplastics and BPA";

(2) "[T]he CPPA claim fails to state a claim because the challenged statements are not deceptive as a matter of law" insofar as (a) representations regarding "sustainability goals and aspirations" are not actionable as misleading statements and (b) its label statements regarding "natural spring water," bottles being "100% recyclable," and bottles being "made from 100% recycled plastic" are not misleading; and

(3) "[T]he Court should strike [Plaintiff's] jury demand because it seeks 'injunctive and declaratory relief but no money damages.'"

Mot. at 2–3, 20.

Plaintiff's Opposition responds that:

(1) Defendant's CPPA claim regarding the term "natural" is not preempted by the FDCA;

(2) Defendant's (a) recyclability and sustainability representations are actionable claims and (b) the complaint sufficiently pleads that Defendant's label statements are misleading; and

[3] "BPA is a manmade industrial chemical used in plastic packaging . . . ." Compl. ¶ 184.

(3) A CPPA claim may be heard by a jury.

Opp. at 2, 17–18.

In its Reply, Defendant reaffirms that (1) Plaintiff's CPPA claim with respect to the alleged misleading use of "Natural Spring Water" is subject to federal presumption; (2) that the CPPA claim fails to state a claim; and (3) that Plaintiff has no right to a jury trial. Reply at 1.

II. Legal Standard

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *See Potomac Dev. Corp. v. District of Columbia,* 28 A.3d 531, 543–44 (D.C. 2011); *Ashcroft v. Iqbal,* 556 U.S. 662, 678–79 (2009); *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555–56 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. Dismissal of a Complaint for failure to state a claim upon which relief can be granted should only be awarded if "it appears beyond doubt that the Plaintiff[s] can prove no set of facts in support of [their] claim which would entitle [them] to relief." *See* Super. Ct. Civ. R. 12(b)(6); *Fingerhut v. Children's Nat'l Med. Ctr.,* 738 A.2d 799, 803 (D.C. 1999).

"A complaint should not be dismissed because a court does not believe that a plaintiff will prevail on its claim; indeed[,] it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test." *Carlyle Investment Mgmt., LLC v. Ace American Ins. Co.*, 131 A.3d 886, 894 (D.C. 2016) (quotations, brackets, and citations omitted). A "complaint must plead factual content that allows the court to draw the reasonable inference that defendant is liable for the misconduct alleged," and the Court should accordingly "draw all inferences from the

factual allegations of the complaint in the plaintiff's favor[.]" *Poola v. Howard Univ.*, 147 A.3d 267, 276 (D.C. 2016) (quotations and citations omitted).

III. Analysis

The Court first addresses Defendant's argument that federal law preempts a CPPA claim based on representations regarding the "natural spring water" label. The Court then addresses whether Plaintiff sufficiently pled its claim with regards to "sustainability goal and aspirations." The Court then determines whether Plaintiff sufficiently pled that Defendant's label statements are misleading. Last, the Court considers Defendant's request to strike the jury demand.

a. Preemption

The Supremacy Clause of Article VI of the Constitution provides that "the Laws of the United States . . . shall be the supreme Law of the Land" and "[f]rom that authority, Congressional acts [like the FDCA] may preempt state law, as well as District law." *Animal Legal Def. Fund v. Hormel Foods Corp.*, 258 A.3d 174, 191 (D.C. 2021) (citing *Arizona v. United States*, 567 U.S. 387, 399, 132 (2012)). Federal statutes "can do so either expressly or impliedly." *Id.*

Here, Defendant argues that the "FDCA contains an express preemption provision" that "forbids states from imposing 'any requirement for a food . . . that is not identical to [the federal] standard of identity . . ." set forth by the U.S. Food and Drug Administration (FDA). Mot. at 5 (quoting 21 U.S.C. 343-1(a)(1)). The Defendant argues that the Plaintiff's CPPA challenge to the "natural spring water label" seeks to impose a "no microplastics requirement for spring water" which impermissibly tacks on additional requirements to the FDA's standard identity of "spring water." *Id.* at 7.

Plaintiff argues that its CPPA claim "does not seek to impose any standard beyond federal law. . . ." Opp. at 5. Plaintiff quotes *Hormel* for the proposition that "[a]dvertisements beyond mere

labels give manufacturers a broader platform to exaggerate their products" and that "[t]here is thus nothing incongruous about Congress demanding national uniformity in labeling, while leaving states to police advertising that extends beyond the labeling." *Id.* (quoting *Hormel*, 258 A.3d at 195).

This Court finds that Defendant applies the express preemption provision of the FDCA too broadly. The Seventh Circuit in *Bell v. Publix Super Mrkts., Inc.* considered the application of a consumer protection challenge under state law to a Defendant's labeling of their "Grated Parmesan Cheese." 982 F.3d 468, 483–84 (7th Cir. 2020). It ultimately determined that a state action challenging the product's "100%" label language under state consumer protection law presented no conflict with the federal standard identity set forth by the FDA. *Id.* The federal standard of identity did not address identity requirements as they related to the 100% language. *Id.* Thus, the Seventh Circuit concluded that the state consumer protection law regulating the 100% language did "not establish any new requirement [that is] different from the standard of identity." *Id.* Said another way, "[a]bsent contrary language in a [federal] standard of identity that protects a particular statement, [21 U.S.C.] § 343-1 d[id] not expressly preempt state-law prohibitions on deceptive statements that sellers add voluntarily to their labels or advertising." *Id.* (citing *Durnford v. MusclePharm Corp*., 907 F.3d 595, 603-04 (9th Cir. 2018)).

Here, Plaintiff's CPPA lawsuit challenges the deceptiveness of the "natural" language in the phrase "natural spring water." Defendant voluntarily added this "natural" modifier to their labels and marketing, and whether the "natural" language is deceptive under the CPPA is a distinct, separate issue from the federal standard identity of "spring water." Accordingly, the instant CPPA suit as to the "natural" language would not impose additional requirements in the federal standard

identity of "spring water" and the CPPA suit is not barred by the express preemption provision of the FCPA.[4]

Defendant also alleges that the CPPA is impliedly preempted as it "directly conflicts with the FDA's role under federal law to establish a uniform, national policy for food safety" including "determining whether substances [such as microplastics] in bottled water may be harmful or can be present in food and beverages." Mot. at 9; *see also Unum Life Ins. Co. of Am. v. District of Columbia*, 238 A.3d 222, 226–227 (D.C. 2020) (outlining that implied preemption may occur "where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress"). However, Defendant overlooks the core issue: whether the "natural spring water" label amounts to a deceptive business practice under the CPPA. The FDA's determinations as to the safety of microplastics in bottled water may be relevant in determining a reasonable consumer's expectations but it is not preemptive of a CPPA cause of action. *See also Organic Consumers Ass'n*, 2019 D.C. Super. LEXIS at *5–*6 (holding that federal "regulations and standards" on the acceptable amount of chemical residues in food may be used "as a basis of evidence" for determining consumer's reasonable expectations in a CPPA acion but that they did

[4] Defendant also argues that the FDA's regulation defining the standard identity of "spring water" uses the word "natural" multiple times—referring to the water as having flown "naturally" to the surface of the earth from a "natural spring." *See* Mot. at 8 (quoting 21 C.F.R. 165.110(a)(2)(vi)). Defendant concludes that the word "natural" is thus part of the "standard identity" and that any state regulation on the use of the word "natural" would be federally preempted by tacking on additional regulation. *Id.* at 7–8. However, the FDA has no formal rule defining the word "natural." Compl. ¶ 191 (citing *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). Furthermore, D.C. Courts have frequently held that CPPA claims regarding the use of the word "natural" survive preemption under comparable federal laws and regulations. *See Hormel Foods Corp.*, 258 A.3d at 191–95; *Organic Consumers Ass'n v. Pret A Manger (USA) Ltd.*, 2018-CA-006750-B, 2019 D.C. Super. LEXIS 5, *5–*6 (D.C. Super. Ct. Apr. 29, 2019)

"not preempt the claim overall . . . challenging the use of the word 'natural' . . ."). The CPPA suit is not barred by implied preemption.

b. Sustainability Goals and Aspirations

Defendant admits that misleading "aspirational statements are actionable" but only "if [Plaintiff] alleges [Defendant] is not 'taking' or does not 'intend to take' 'steps that at least have the potential of fulfilling those aspirations. Mot. at 12 (quoting *Earth Island Instr. V. Coca-Cola Co*, 321 A.3d 654, 670 (D.C. 2024)). However, Plaintiff's Complaint sufficiently pleads that Defendant made aspirational statements and is not taking steps of fulling those aspirations:

> [Defendant] Danone represents on the evian website . . . that 43% of its bottles use [recycled PET] globally, making it incredibly unlikely that evian will be able to reach its ambitious 2025 goal of 100% recycled PET], as it previously has not increased its PET integration by more than 13% in one year.

Compl. ¶ 95. Plaintiff outlines steps taken in fulfilling its aspirations. Mot. at 13. However, whether a reasonable consumer would find defendant's aspirational statements misleading in light of the Defendant's steps taken is an issue of fact. Plaintiff has sufficiently pled its claim as to Defendant's aspirational statements.

c. Label Statements

Defendant alleges that Plaintiff failed to state a claim as its labels regarding (1) "natural spring water";[5] (2) the plastic bottles being "100% recyclable"; and (3) the plastic bottles being "made from 100% recycled plastic" are "true and not misleading." Mot. at 15–20. However, whether those statements are true is an issue of fact; similarly, whether the statements are

[5] The Defendant renews much of is argument about the FDA's regulations on the suitable amount of microplastics and the reasonable consumer's expectations regarding the presence of microplastics in bottles labeled "natural spring water" Mot. at 15. However, as stated before, the FDA's determination on the safety of microplastics is simply probative of the reasonable consumer's expectations, which is itself an issue of fact.

"misleading under the CPPA generally is a 'question of fact . . . and not a question of law for the court.'" *Center for Inquir Inc. v. Walmart, Inc.*, 283 A.3d 109, 121 (D.C. 2022) (quoting *Saucier v. Countrywide Home oans*, 64 A.3d 528, 445 (D.C. 2013)). The Court will not dismiss Plaintiff's CPPA claim as to the label statements.

d. Jury Demand

The Honorable Yvonne Williams provided the following on a party's right to a jury trial in another matter involving the CPPA:

> The right to a jury trial extends to legal remedies in which legal, rather than equitable, rights are at issue. *Johnson v. Fairfax Village Condominium IV Unit Owners Ass'n*, 641 A.2d 495, 505 (D.C. 1994). Thus, "where the issue in dispute is legal in nature a constitutional right to trial by jury attaches; where the issue, however[,] is equitable in nature there is no constitutional right to a jury trial." *Id.* To determine whether a claim is a properly brought before a jury, "the Court must examine both the nature of the action and of the remedy sought." *Tull v. United States*, 481 U.S. 412, 417 (1987).

D.C. v. Equity Residential Mgmt., LLC, 2017 CA 008334 B, 2019 D.C. Super. LEXIS 21, * 3 (D.C. Super. Ct. Nov. 4, 2019). Defendant's request to strike the jury demand is denied without prejudice to further briefing consistent the standard set forth above.

In consideration of the above, *Danone Waters of America, LLC's Motion to Dismiss the Complaint* is denied. Wherefore, it is this 18th day of March 2025 hereby:

ORDERED that the *Danone Waters of America, LLC's Motion to Dismiss the Complaint* is **DENIED**; and it is further

ORDERED that Defendant's request to strike the jury demand is denied without prejudice to further briefing.

SO ORDERED.

Leslie A. Meek, Associate Judge
(Signed in Chambers)

Copies to:
Counsel of Record via Odyssey.