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Global Food Products Company Sued Over Single-Use Plastics

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Environmental nonprofit ClientEarth, with support from other activist groups, has **commenced litigation** in a Paris court against a global food-products company. The claimants contend that Danone has breached France’s Corporate Duty of Vigilance Law in that the company does not have an adequate plan to reduce its plastic footprint. Prior to filing the claim in Paris, ClientEarth served “legal warnings” on Danone and certain other French companies, including Auchan, Carrefour, Casino, Lactalis, McDonald’s France, Les Mousquetaires, Picard and Nestlé France.

The French Corporate Duty of Vigilance Law (*Loi de Vigilance*) came into force in 2017 and requires that companies with over 5,000 employees in France, or 10,000 employees globally, prepare, publish and enact a ‘vigilance plan’ corresponding with the UN’s human rights due diligence procedures on an annual basis. This plan must include social and environmental due diligence measures across the company’s entire supply chain. The law is considered by many legal commentators to be a forerunner to the EU’s Corporate Sustainability Due Diligence Directive, which we **previously discussed**.

Danone has “**strongly refute[d]**” the accusations and stated that it supports a legally binding international agreement that is currently being negotiated under the auspices of the United Nations. In March 2022, at a UN Environment Assembly in Nairobi, Kenya, 175 nations adopted a **resolution** to end plastic pollution and develop a related international legally binding agreement by 2024. The UN resolution covers the full lifecycle of plastic including its production and disposal.

Rosa Pritchard, a lawyer for ClientEarth, explained the legal filing, by asserting that: “Danone is trudging ahead without a serious plan to deal with plastics, despite clear concern from climate and health experts and consumers, and a legal obligation to face up to the issue. It continues to rely on single-use plastic packaging in the hopes that recycling will miraculously deal with the flood of plastics it puts on the market. But recycling is a limited solution as only 9% of plastics

ever made have been recycled. It's unrealistic for food giants like Danone to pretend recycling is the silver bullet."

In a response to the legal filing, Danone argued that: "We are implementing a comprehensive framework of actions aimed at reducing the use of plastic, developing reuse, strengthening collection and recycling schemes, and developing alternative materials. We have already made significant progress on each of these fronts, particularly on plastic reduction, with, for example, a decrease of 12% at global level (60,000 tons in absolute) between 2018 and 2021."

Taking The Temperature: We have discussed how regulators globally appear to be taking a relatively more aggressive approach to alleged greenwashing. The type of litigation commenced by ClientEarth represents a different category of climate-related litigation or enforcement activity. Pressure groups are actively seeking to bring claims under newly-established corporate responsibility and climate-focused legislation to target companies that are perceived to be failing to address ESG issues or greenwash practices with an environmental impact. Other examples include *Smith v. Keurig Green Mountain, Inc.*, 18-cv-6690 (N.D. Cal. 2018) (claims against Keurig for wrongfully labeling Keurig pods as recyclable); *Dwyer v. Allbirds, Inc.*, No. 7:21-cv-05238 (S.D.N.Y. 2021) (claiming Allbirds's statements concerning its environmental impacts were false and deceptive and materially misleading); *Swartz v. Coca-Cola Co.*, Case No. 3:21-cv-04643 (N.D.C.A. 2021) (false advertising claims that Coca-Cola advertised that its single-use plastic bottles were 100% recyclable). It remains to be seen how effective such litigation will be in realizing the claimants' ESG goals. Large companies like Danone and other organizations typically targeted in these types of actions already operate within a web of statutory and regulatory requirements, which often differ across multiple jurisdictions. In the case of Danone, the company correctly refers to the UN plastics-reduction initiative. It is not clear that one-off litigation will have a significant effect given the suite of regulation that already exists. Nonetheless, we expect these types of suits be filed with greater frequency in France and other jurisdictions. To prepare, companies and their directors and officers should assess, and if necessary, enhance the quality of their climate-related governance, **taking into account** applicable legal and regulatory requirements and industry best practices. Having sound governance in this area also will enable companies to quickly and accurately disclose their approaches to climate and other ESG issues and, if necessary, push back on unsupported accusations.