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Airline Sued Over Claims That it is “First Carbon-Neutral Airline”

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By Sara Bussiere
Special Counsel | Global Litigation

On May 30, 2023, a [consumer class action lawsuit](#) was filed in the United States District Court for the Northern District of California asserting that the airline falsely claimed that it is the world’s “first carbon-neutral airline.” Plaintiff asserts three causes of action against Delta Air Lines: (i) violation of the Consumers Legal Remedies Act, § 1750; (ii) false advertising, Business and Professions Code § 17500; and (iii) unlawful, unfair, and fraudulent trade practices in violation of Business and Professions Code § 17200. Plaintiff claims that Delta relied on carbon credits to offset its reported emissions, but the benefits from those carbon credits are largely exaggerated and therefore, Delta’s reported emissions data is false and misleading.

Specifically, the complaint alleges that the voluntary carbon offset market “cannot make a company ‘carbon neutral’” because “the primary offset vendors offer offsets replete with” false data, including:

- “inaccurate accounting;”
- “non-additional effects on worldwide carbon levels due to the vendors crediting offsets for projects that would have occurred with or without market investment;”
- “non-immediate speculative emissions reductions that will at best occur over decades, despite crediting purchase with the sum of those projected offsets;” and
- “impermanent projects subject to disease, natural disasters, and human intervention.”

The complaint further alleges that because Delta’s carbon-neutrality claims are false and misleading, “consumers would not have purchased tickets on Defendant’s flights, or paid substantially less for them, had they known the claim of carbon neutrality was false.” Plaintiff claims that she paid a premium for Delta flights believing she was “engaged in more ecologically conscious air travel” and participating “in a global transition away from carbon emissions.” A copy of the 41-page complaint is available [\[here\]](#).

Taking the Temperature: This lawsuit represents one of the first private actions in the United States based on greenwashing claims. Though the case is in its very early stages, we offer some preliminary observations:

First, whether plaintiff is able to obtain class certification will serve as a potential indicator for both the strength of her claims and whether similar claims are likely to follow. Though Plaintiff asserts her claims on behalf of “[a]ll natural persons who, between March 6, 2020 and the present, purchased a Delta Airlines flight while located in California,” part of her theory is that, as someone in her late 20s, climate anxiety is having a significant particular impact on Plaintiff and her generation. That novel theory aside, Plaintiff is likely to struggle with several elements of the asserted claims, including identifying cognizable damages. However, if Plaintiff is able to obtain class certification, then whether or not she ultimately is successful on the merits, such a result in and of itself could encourage additional consumer climate-focused litigation with respect to other industries and based on these or different theories.

Second, Plaintiff asserts a number of targeted attacks on the carbon offset market, an area that has triggered significant ongoing debate, including regarding the quality of the offsets vis-à-vis climate change mitigation as well as the potential benefits of, or need for, regulation of carbon offset markets. As we have [previously written](#), Democratic senators have weighed in by asking the Commodity Futures Trading Commission (CFTC) for improved regulation of the market for carbon offsets in response to the CFTC’s June 2022 request for information on climate-related financial risk.