

# Microplastics Are the Latest Trend in “Greenwashing” Litigation

JULY 3, 2024

## KEY TAKEAWAYS

- Recent lawsuits claim baby bottle manufacturers deceived consumers by representing sippy cups and baby bottles were “BPA free” and therefore safe for use despite, plaintiffs allege, that heating these products could cause microplastics to leak into food and drinks.
- This is a continuation of the trend of “greenwashing” litigation, a type of case wherein plaintiffs allege that companies make false or deceptive advertising claims about the environmental or societal benefits of a product or service to capitalize on increased consumer interest in how their consumption habits impact the environment and their bodies.

On June 25, 2024, putative class action complaints were filed in the United States District Court for the Northern District of California against Philips North America<sup>[1]</sup> and Handi-Craft<sup>[2]</sup> by California consumers alleging that, despite advertising their sippy cups and baby bottles were “BPA Free,” the companies’ products are made with polypropylene, which allegedly leaks microplastics when exposed to heat.

Microplastics are small plastic particles less than 5 mm in diameter that form when solid plastics break down through abrasion, degradation, or chemical processes such as exposure to heat.<sup>[3]</sup> These particles can originate from chemicals used in the creation of plastic, for example, bisphenol A (BPA), an industrial chemical used to make certain plastics and resins. The FDA prohibits BPA in baby bottles, sippy cups, and infant-formula packaging, but has said that BPA is safe in most food packaging at certain levels and has, to date, declined to regulate microplastics.<sup>[4]</sup>

In these lawsuits, the plaintiffs do not allege these products contain BPA contrary to the advertisements. The plaintiffs instead contend a reasonable consumer would interpret “BPA free” advertising to imply that the products are free from all potential microplastics, not just BPA. The complaints allege that exposure to microplastics is particularly harmful during critical periods of child development, such as infancy and early childhood, and can impact various bodily systems—including the digestive, reproductive, central nervous, immune, and circulatory systems—potentially leading to long-term health impairments.<sup>[5]</sup> The twin suits allege violations of the California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 et seq.), California False Advertising Law (Cal. Bus. & Prof. Code §§ 17500 et seq.), and California Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750 et seq.) and breach-of-warranty and unjust-enrichment claims. These claims are made on behalf of both a putative nationwide class and a California

subclass made up of individuals who purchased these products with claims they are “BPA free” within the applicable statute of limitations.

Claims of manufacturers “greenwashing” their products are not a novel theory for false-advertising claims. In recent years, class action lawsuits have been filed around the country alleging similar false advertising for products such as makeup, which claim to be “natural,” “environmentally friendly,” or “healthy.”

The two California cases are the most recent in an ongoing trend of attacking manufacturers of plastic products. We will continue to monitor, provide counsel on, and defend our clients against this trend. Winston has deep experience handling class action risks and greenwashing or similar claims. Please feel free to reach out to the contributing authors for more information on these issues.

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<sup>11</sup> [Tullisa Miller et al. v. Phillips North America LLC, 3:24-cv-03781](#) (N.D. Cal. June 25, 2024).

<sup>12</sup> [Alejandrina Cortez et al. v. Handi-Craft Co. Inc., 3:24-cv-03782](#), (N.D. Cal. June 25, 2024).

<sup>13</sup> Agency for Toxic Substances & Disease Registry, *What's Next?*, <https://www.atsdr.cdc.gov/2020atsdrannualreport/whats-next.html>.

<sup>14</sup> FDA, *Bisphenol A (BPA): Use in Food Contact Application*, <https://www.fda.gov/food/food-packaging-other-substances-come-contact-food-information-consumers/bisphenol-bpa-use-food-contact-application>.

<sup>15</sup> [Alejandrina Cortez et al. v. Handi-Craft Co. Inc., 3:24-cv-03782](#), (N.D. Cal. June 25, 2024).

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