

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

<p>GMO FREE USA d/b/a TOXIN FREE USA, P.O. Box 458, Unionville, CT 06085,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>COVER GIRL COSMETICS, 11050 York Rd, Cockeysville, MD 21030 and COTY, INC., 350 Fifth Avenue, New York, New York 10118</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2021 CA 004786 B</p> <p>COMPLAINT</p> <p><u>DEMAND FOR JURY TRIAL</u></p>
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Plaintiff GMO Free USA d/b/a Toxin Free USA (“Toxin Free USA”) brings this action against Defendants Cover Girl Cosmetics (“CoverGirl”) and Coty, Inc. (“Coty”) (collectively, “Defendants”) regarding their false and deceptive marketing and sale of CoverGirl brand TruBlend Pressed Powder (the “Product”).¹ Despite environmental and product safety representations, the Product contains per- and polyfluoroalkyl substances (“PFAS”). PFAS are a group of synthetic chemicals believed to be harmful to humans and the environment. Because of the ability of PFAS to persist and accumulate over time, PFAS are harmful at even very low levels. This Complaint is on behalf of the general public of the District of Columbia, in the interest of consumers. This is not a class action, and no class certification will be sought. Toxin Free USA alleges the following based upon personal knowledge, information, belief, and the investigation of Counsel:

¹ Discovery may demonstrate that additional CoverGirl products are within the scope of this Complaint. Plaintiff reserves the right to amend this complaint to include additional cosmetic items identified through the course of discovery.

INTRODUCTION

1. This is a consumer-protection case concerning deceptive marketing representations about CoverGirl’s cosmetic products. The case is brought by Toxin Free USA, a nonprofit, public-interest organization dedicated to consumer protection and education. Toxin Free USA seeks no monetary damages, only an end to the deceptive marketing and advertising at issue.

2. PFAS are a group of synthetic chemicals that can provide certain marketable benefits for cosmetics products, including “hydrophobicity and film-forming ability, which are thought to increase product wear, durability, and spreadability.”²

3. PFAS are often used for their “nonstick” and surface-tension lowering properties, which makes them useful for repelling oil and water (*e.g.* preventing stains) and modifying surface chemistry.

4. PFAS, however, are also a group of chemicals with known harmful effects on people and the environment. Consumers have grown increasingly aware of and concerned about PFAS and the presence of such in their bodies, the environment, and the products they use.³

5. As a result, there is a growing consumer advocacy movement to eliminate PFAS from various products, including cosmetics.⁴

6. In fact, on October 18, 2021, underscoring the gravity of the PFAS threat, the Biden-Harris Administration announced, “accelerated efforts to protect Americans from per- and

² Heather D. Whitehead, et al., *Fluorinated Compounds in North American Cosmetics*, *Environ. Sci. Tech. Ltrs.* 2021, 8, 7, 538–544, <https://doi.org/10.1021/acs.estlett.1c00240>.

³ LastWeekTonight, *PFAS: Last Week Tonight With John Oliver (HBO)*, YouTube (Oct. 4, 2021), <https://www.youtube.com/watch?v=9W74aeuqsiU>.

⁴ Elicia Mayuri Cousins, et al., *Risky Business? Manufacturer and Retailer Action to Remove Per- and Polyfluorinated Chemicals From Consumer Products*, *NEW SOLUTIONS: A J. of Environ. & Occupational Health Policy*, 2019, 29(2), 242–65, <https://doi.org/10.1177/1048291119852674>.

polyfluoroalkyl substances (PFAS), which can cause severe health problems and persist in the environment once released, posing a serious threat across rural, suburban, and urban areas.”⁵

7. Defendants are cosmetics companies that sell CoverGirl products both in stores and online.⁶ Coty acquired Covergirl in 2016.⁷

8. CoverGirl represents itself as being a champion of “open, inclusive and *sustainable* beauty.”⁸

9. Coty publishes a sustainability report for its business, which includes the CoverGirl brand, touting its environmental initiatives along with its “Product Safety” strategy.⁹

10. In reality, the Product contains high levels of organofluorine, which is an indicator of PFAS, which are neither safe nor sustainable.

11. PFAS are a group of synthetic chemicals known to be toxic to humans, even at very low levels. Furthermore, PFAS are considered “forever chemicals,” meaning they do not break down naturally in the environment.¹⁰ Use of PFAS in the manufacturing of cosmetics and other products leads to the accumulation of PFAS in soil, water, humans, and elsewhere in the environment, threatening other organisms.¹¹

⁵ *FACT SHEET: Biden-* <https://bit.ly/3DZvZba> (last visited Oct. 19, 2021).

Harris Admin. The White House <https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/11/20210811-statement-by-the-white-house-on-the-announcement-of-the-2021-2022-fiscal-year-budget/>

⁶ CoverGirl, <https://www.covergirl.com/> (last visited Oct. 13, 2021).

⁷ *Coty Completes Merger with P&G Specialty Beauty Business*, Business Wire (Oct. 3, 2016), <https://www.businesswire.com/news/home/20161002005073/en/Coty-Completes-Merger-with-PG-Specialty-Beauty-Business>.

⁸ *Cruelty Free*, CoverGirl, https://www.covergirl.com/en_us/cruelty-free-makeup.html (last visited Oct. 13, 2021) (emphasis added).

⁹ Coty, *Beauty That Lasts: Sustainability Report 2020*, https://www.coty.com/sites/default/files/coty_sustainability_report_fy20.pdf#page=1 (last visited Oct. 13, 2021).

¹⁰ As an illustration of how “forever” PFAS compounds are, in 1997, when a PFAS manufacturer sought “clean blood samples” to compare to PFAS-tainted samples, the only source of “clean blood” (free of PFAS contamination) was the “preserved blood of soldiers who died in the Korean War, before [PFAS] products spread worldwide.” *Poisoned Legacy*, Environmental Working Group, (May 1, 2015) <https://www.ewg.org/research/poisoned-legacy>.

¹¹ Nat’l Inst. of Env’t Health Sciences, *Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)*, Nat’l Insts. of Health U.S. Dept. of Health and Human Servs., https://www.niehs.nih.gov/health/materials/perfluoroalkyl_and_polyfluoroalkyl_substances_508.pdf (last visited Oct. 13, 2021); Francisca Pérez, et al., *Accumulation Of Perfluoroalkyl Substances In Human Tissues*, 59 Environ. Int’l 354 (2013).

12. Defendants' representations mislead D.C. consumers into believing that the Product is not made with environmentally damaging, toxic chemicals like PFAS, when in fact, the Product is made with such chemicals. Thus, Defendants' marketing of the Product is false and misleading to D.C. consumers.

STATUTORY FRAMEWORK

13. This action is brought under the District of Columbia Consumer Protection Procedures Act ("CPPA"), D.C. Code § 28-3901, *et seq.*

14. The CPPA makes it a violation for "any person" to, *inter alia*:

Represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;

Represent that goods or services are of a particular standard, quality, grade, style, or model, if in fact they are of another;

Misrepresent as to a material fact which has a tendency to mislead;

Fail to state a material fact if such failure tends to mislead;

Use innuendo or ambiguity as to a material fact, which has a tendency to mislead; or

Advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

D.C. Code § 28-3904(a), (d), (e), (f), (f-1), (h).

15. 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.

16. 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). The statute "shall be ***construed and applied liberally*** to promote its purpose." *Id.* (emphasis added).

17. Because Toxin Free USA 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.”

18. 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 infra* ¶¶ 61-64, Toxin Free USA is an organization dedicated to consumer advocacy, and Toxin Free USA has previously represented D.C. consumers in similar actions under the CPPA. Toxin Free USA thus has a sufficient nexus to D.C. consumers to adequately represent their interests.

19. This is not a class action, or an action brought on behalf of any specific consumer, but an action brought by Toxin Free USA on behalf of the general public, *i.e.*, D.C. consumers generally. No class certification will be requested.

20. This action does not seek damages. Instead, Toxin Free USA seeks to end the unlawful conduct directed at D.C. consumers, *i.e.*, Defendants’ 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). Toxin Free USA also seeks declaratory relief in the form of an order holding Defendants’ conduct to be unlawful.

FACT ALLEGATIONS

I. Defendants Make Representations About The Safety and Sustainability of The Product.

21. Coty represents that “[o]ur products have an important role to play in building a sustainable future. To respond to evolving social and environmental challenges, we intend to keep sustainability at the heart of product innovation.”¹²

22. Further, Coty publishes a Sustainability Report, which reiterates such promises, including that

from the sourcing of raw materials to manufacturing . . . our products have an *environmental impact* Our ambition is to put *sustainability* at the heart of innovation We want to change the way we design, formulate and manufacture, in order to *minimize our environmental impacts* and create more innovative, *cleaner* products.¹³

23. In the same Sustainability Report, Coty makes safety promises: “Human safety assessments are integral to our product development process, ensuring all products are safe for their intended use.”¹⁴

24. Additionally, Coty represents that it supports the UN Global Compact Ten Principles,¹⁵ which make a promise regarding corporate sustainability.¹⁶

25. In addition to the representations made on its behalf by Coty, CoverGirl also frequently touts its sustainability efforts.

¹² *Beauty of Our Product*, Coty, <https://www.coty.com/sustainability/beauty-of-our-product> (last visited Oct. 13, 2021).

¹³ *Supra* note 9 at 7 (emphasis added).

¹⁴ *Id.* at 31.

¹⁵ *Coty Inc. Announces Updated Sustainability Platform “Beauty That Lasts” Includes Targets From 2020–2030*, Coty, <https://bit.ly/30s9nS5> (last visited Oct. 13, 2020).

¹⁶ *The Ten Principles of the UN Global Compact*, United Nations, <https://www.unglobalcompact.org/what-is-gc/mission/principles> (last visited Oct. 13, 2020).

26. A recent press release by CoverGirl and Coty identified the CoverGirl brand as “the original founder and creator of clean makeup and 60 years later continues to define what it means to be a responsible beauty brand.”¹⁷

27. In fact, a quote from Stefano Curti, Chief Brands Officer of Coty, in that same press release states that “COVERGIRL continues to make good-for-you makeup and skincare, prioritizing the health of our consumers and the planet.”

28. CoverGirl represents not only that it prioritizes the safety and sustainability of the Product, but that it is an industry leader in this arena as well: “As a brand, COVERGIRL continues to identify areas where we can reduce our environmental impact, continuing to lead the way as the original clean brand which our consumers are proud to stand behind.”¹⁸

II. The Product Is Not Sustainable Because It Contains PFAS.

29. Contrary to Defendants’ representations, the Product is not sustainable because it most likely contains PFAS, which are damaging to the environment.

30. Toxin Free USA conducted a test on a sample of CoverGirl’s TruBlend Pressed Powder and found 6,242 parts per million (ppm) of fluorine. Fluorine is an indicator that a product contains PFAS.¹⁹

¹⁷ *Coty’s COVERGIRL Takes Largest Sustainability Step To-Date – A Reduction of 35% of Plastic in Pressed Powder Packaging Globally*, Business Wire, (June 23, 2021), <https://www.businesswire.com/news/home/20210623005614/en/Coty%E2%80%99s-COVERGIRL-Takes-Largest-Sustainability-Step-To-Date-%E2%80%93-A-Reduction-of-35-of-Plastic-in-Pressed-Powder-Packaging-Globally>.

¹⁸ *Id.*

¹⁹ See, e.g., Whitehead et al., *supra* note 2 (PFAS concentrations were detected by screening for total fluorine); *Testing for PFAS in food packaging*, Supply Chains Solutions Center, <https://bit.ly/3fNPHwF> (last visited Oct. 7, 2021) (recommending that companies screen for PFAS “using a total fluorine method ... [that] measures all forms of PFAS”); Jen Dickman et. al., *Packaged in Pollution: Are food chains using PFAS in packaging?*, <https://saferchemicals.org/packaged-in-pollution/> (testing for PFAS using total fluorine amounts) (last visited Oct. 7, 2021).

31. Subsequent testing revealed that all 6,242 ppm of the fluorine detected was organic fluorine; organic fluorine results identify a quantity of organofluorine compounds (*e.g.*, PFAS) and excludes the possibility that fluorine may be present from other or natural sources.²⁰

32. “Since the world hasn’t found a way to test which of 9,000 PFAS are in products, the best current test methods [for PFAS] look for fluorine.”²¹ Also, “when measuring organofluorine in the environment one can assume that it originates from an anthropogenic source.”²²

33. PFAS are a family of more than 4,000 highly fluorinated aliphatic compounds manufactured by humans and are known to be damaging to the environment.

34. Additionally, “Fluorine is regarded as an environmental and industrial contaminant...”²³

35. A large number of PFAS have been developed by different companies over time for a wide variety of industrial and consumer applications (*e.g.*, cosmetics, firefighting foams, food contact materials, household products, inks, medical devices, oil production, mining, pesticide formulations, and textile, leather, and apparel).²⁴

36. PFAS have become known as “forever chemicals” because the carbon-fluorine bonds in PFAS are extremely strong and thus are not appreciably degraded under environmental

²⁰ Lara Schultes, et al., *Total Fluorine Measurements in Food Packaging: How Do Current Methods Perform?*, 6(2) Environ. Sci. Technol. Letters 73 (2019).

²¹ Jessian Choy, *New Independent Study Confirms PFAS in Thinx, Other Products*, Sierra Club, (Jun. 3, 2021), <https://www.sierraclub.org/sierra/ask-ms-green/new-independent-study-confirms-pfas-thinx-other-products>.

²² Alina Koch, et al., *Towards a comprehensive analytical workflow for the chemical characterisation of organofluorine in consumer products and environmental samples*, 123 TrAC Trends in Analytical Chemistry 115423 (2020) (“[N]o single analytical method is versatile and robust enough to identify and quantify the vast number of PFASs, as well as other fluorine-containing agrochemicals or pharmaceuticals that might be present in a sample.”)

²³ Elżbieta Bombik, et al. *The influence of environmental pollution with fluorine compounds on the level of fluoride in soil, feed and eggs of laying hens in Central Pomerania, Poland*. 192 Environ Monit Assess 178 (2020) <https://doi.org/10.1007/s10661-020-8143-3>.

²⁴ Zhanyun Wang et al., *A Never-Ending Story of Per- and Polyfluoroalkyl Substances (PFASs)?*, 51 Environ. Sci. Technol. 2508, 2508 (2017).

conditions. The continued use of PFAS is, by their nature, unsustainable, because it will necessarily lead to a greater concentration of PFAS in the environment.

37. Along with their lack of “biodegradation,” PFAS “have been detected in oceans, across continents and in remote parts of the globe,” where they “contaminate[]” both “water” and “soil.” As a result of this contamination, humans and animals are exposed to these “toxic” chemicals through “food” and “drinking water.”²⁵

38. Finally, due to the environmental damage caused by PFAS, the Environmental Protection Agency (“EPA”) is taking actions to address PFAS pollution.²⁶

III. The Product Is Not Safe Because It Contains PFAS.

39. Contrary to Defendants’ representations, the Product is not safe because it contains PFAS, which have a negative impact on the health of humans.²⁷

40. Toxin Free USA found organic fluorine in the Product sample, which is an indicator of the presence of PFAS. *See supra* ¶¶ 30, 31.

41. PFAS are a family of more than 4,000 highly fluorinated aliphatic compounds manufactured by humans and are known to negatively impact human health.²⁸

42. Not only are PFAS harmful to the environment, but because they do not degrade naturally, they damage human and animal health through bioaccumulation in blood and tissue.

²⁵ Marco Bonato, et al. *PFAS Environmental Pollution and Antioxidant Responses: An Overview of the Impact on Human Field*, 17 Int’l J. of Environ. Research and Public Health 21 (2020), doi:10.3390/ijerph17218020.

²⁶ *EPA Actions to Address PFAS*, EPA, <https://www.epa.gov/pfas/epa-actions-address-pfas> (last visited Dec. 9, 2021).

²⁷ Elsie M. Sunderland, et al., *A review of the pathways of human exposure to poly- and perfluoroalkyl substances (PFASs) and present understanding of health effects*, 29 J. Expo Sci. Environ. Epidemiol, 131-147 (2019), doi: 10.1038/s41370-018-0094-1 (“Multiple studies find significant associations between PFAS exposure and adverse immune outcomes in children.”).

²⁸ *Id.* (“More than 4000 PFASs have been manufactured by humans and hundreds have been detected in environmental samples.”).

IV. Defendants' Representations Mislead Reasonable Consumers.

43. Reasonable consumers encountering Defendants' representations emphasizing safety and sustainability do not expect the Product to contain harmful, unsustainable chemicals, such as PFAS.

44. Reasonable consumers would consider PFAS (which are known to be persistent and linked with high cholesterol, thyroid disease, pregnancy-induced hypertension, ulcerative colitis, and kidney and testicular cancer) to be unsafe.

45. Reasonable consumers would also consider PFAS, which are non-biodegradable "forever chemicals," to be environmentally unsustainable.

46. Thus, Defendants' conduct in marketing the Product as being made sustainably and safe deceived and/or was likely to deceive the public. D.C. consumers have been, and continue to be, deceived into believing that the Product is free from toxic chemicals and sustainable, when in fact, the Product contains "forever chemicals" known to be harmful to humans and to accumulate in the environment.

47. D.C. consumers cannot discover the true nature of the Product from reading Defendants' websites or marketing materials. Ordinary consumers do not have the ability to test cosmetics for PFAS or sufficient knowledge about different methods of testing for PFAS to learn that the Product contains PFAS.

48. Defendants deceptively and misleadingly conceal material facts about the Product, namely, that the Product is not free from toxic chemicals or sustainable, and that the Product contains PFAS.

49. Defendants knew what representations they made in marketing the Product. They also knew how the Product was sourced and produced. Defendants thus knew, or should have

known, the facts demonstrating that the Product was falsely represented to consumers, including D.C. consumers.

50. In making the false, misleading, and deceptive representations and omissions at issue, Defendants also knew and intended that consumers would choose to buy, and would pay more for, products represented to be “safe” and “sustainable,” furthering Defendants’ private interest of increasing sales of their products and decreasing the sales of their competitors’ products that are truthfully marketed.

51. D.C. Consumers are at risk of real, immediate, and continuing harm if the Product continues to be sold with the misleading representations.

V. Defendants’ Representations Are Material to Consumers.

52. Consumers care about whether or not the products they use contain toxic or harmful chemicals.

53. In a survey of more than 1000 consumers, nearly all participants (98%) indicated they were interested in knowing about the presence of harmful chemicals in everyday products.²⁹

54. Also, “two-thirds (64%) of Americans are willing to pay more for sustainable products.”

55. In fact, market trends in the cosmetic industry show growing consumer demand that beauty brands be environmentally conscious,³⁰ with one study finding that “76% [of shoppers of beauty products] focus[ed] on buying products that are sustainably made.”³¹

²⁹ Sabrina Hartmann, et al., *Interested Consumers’ Awareness of Harmful Chemicals in Everyday Products*, 29 *Environ. Sci. Eur.* 1, 4 (2017), <https://enveurope.springeropen.com/articles/10.1186/s12302-017-0127-8>.

³⁰ Kacey Culliney, *Beauty business in 2023: ‘Complete transparency will be non-negotiable’, says WGSN*, *Cosmetics design-europe.com*, <https://bit.ly/3p2HhqA> (last visited Oct. 13, 2021).

³¹ *The Changing Face of the Beauty Shopper*, *PowerReviews*, <https://www.powerreviews.com/insights/2021-beauty-industry-consumer-report/> (last visited Oct. 19, 2021).

56. In addition to consumer and industry trends, the Federal Trade Commission (“FTC”) has released “Green Guides” that “caution marketers not to make unqualified general environmental benefit claims because ‘it is highly unlikely that marketers can substantiate all reasonable interpretations of these claims’.”³²

JURISDICTION AND VENUE

57. This Court has personal jurisdiction over the parties in this case. Toxin Free USA consents to this Court having personal jurisdiction over the organization.

58. This Court has personal jurisdiction over Defendants because they have purposefully directed their conduct to the District and have availed themselves to the benefits and protections of District of Columbia law.

59. Defendants aim marketing at consumers within the District. The Products can be, and are, purchased in the District by D.C. consumers. Defendants’ sustainability report is accessible in the District.

60. This Court has subject-matter jurisdiction over this action under the CPPA, D.C. Code § 28-3901, *et seq.*

PARTIES

61. Toxin Free USA, also known as GMO Free USA, is a 501(c)(3) non-profit organization whose “mission is to harness independent science and agroecology concepts to advocate for clean and healthy food and ecological systems.” Toxin Free USA educates consumers about the potential hazards of synthetic ingredients, pesticides and biocides, and genetically engineered organisms.³³

³² FTC Green Guides, 16 C.F.R. § 260.4(b) (2012).

³³ *Overview*, GMO Free USA, <https://gmofreeusa.org/about-us/overview/> (last visited Aug. 9, 2021).

62. “In 2020 GMO Free USA expanded its public education mission beyond GMOs and GMO-related pesticides, establishing Toxin Free USA as a complementary arm to our existing organization. It is impossible to have ‘clean food and environment’ without addressing the many toxins beyond GMOs and pesticides, such as PFAS chemicals, that have become pervasive in our food and environment.”³⁴

63. Toxin Free USA performs its work and advocates for consumers throughout the United States, including in the District of Columbia.

64. Toxin Free USA’s website, publications, public education, research, network building, and mobilization activities provide an important service to consumers and community activists every month.

65. On August 30, 2021, Toxin Free USA purchased CoverGirl’s “TruBlend Pressed Powder” through the Internet in the District of Columbia.

66. On October 11, 2021, testing commissioned by Toxin Free USA through a third-party lab revealed the presence of fluorine in the CoverGirl Product.

67. On October 18, 2021, testing commissioned by Toxin Free USA through a third-party lab revealed the presence of organic fluorine in the CoverGirl Product.

68. Defendant CoverGirl is a subsidiary of Coty and is headquartered in Maryland.

69. Defendant Coty is incorporated in Delaware and headquartered in New York State.

70. Defendants market and sell the Product throughout the United States, including in the District of Columbia.

71. Upon information and belief, Defendants have caused harm to the general public of the District of Columbia.

³⁴ *Id.*

CAUSE OF ACTION

Violations of the District of Columbia Consumer Protection Procedures Act

72. Toxin Free USA incorporates by reference all the allegations of the preceding paragraphs of this Complaint.

73. Toxin Free USA is a nonprofit, public interest organization that brings these claims on behalf of the general public of D.C. consumers. *See* D.C. Code §§ 28-3905(k)(1)(D).

74. Through § 28-3905(k)(1)(D), the CPPA explicitly allows for public interest standing and allows a public interest organization to stand in the shoes of a consumer to seek relief from any violation of the CPPA.

75. Each Defendant is a “person” and a merchant that provides “goods” within the meaning of the CPPA. *See id.* § 28-3901(a)(1), (3), (7).

76. As alleged in this Complaint, Defendants have falsely and deceptively represented that Product was safe and sustainable when, in reality, the Product contained PFAS.

77. Thus, Defendants have violated the CPPA by “represent[ing] that goods . . . have a source . . . [or] characteristics . . . that they do not have”; “represent[ing] that goods . . . are of a particular standard, quality, grade, style, or model, if in fact they are of another”; “misrepresent[ing] as to a material fact which has a tendency to mislead”; “fail[ing] to state a material fact if such failure tends to mislead”; “us[ing] innuendo or ambiguity as to a material fact, which has a tendency to mislead”; and “advertis[ing] . . . goods . . . without the intent to sell them as advertised.” *See id.* § 28-3904(a), (d), (e), (f), (f-1), (h).

JURY TRIAL DEMAND

78. Toxin Free USA hereby demands a trial by jury.

PRAYER FOR RELIEF

Wherefore, Plaintiff Toxin Free USA prays for judgment against Defendants and requests the following relief:

- A. A declaration that Defendants' conduct is in violation of the CPPA;
- B. An order enjoining Defendants' conduct found to be in violation of the CPPA; and
- C. An order granting Plaintiff costs and disbursements, including reasonable attorneys' fees and expert fees, and prejudgment interest at the maximum rate allowable by law.

DATED: December 20, 2021

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