How Climate Change Cases Abuse Consumer Protection Laws and Harm the Most Vulnerable

EXECUTIVE SUMMARY

Recent climate-related lawsuits brought under state consumer protection statutes represent a significant departure from established Federal Trade Commission standards governing deceptive acts and practices. These cases attempt to repurpose consumer protection laws to advance contested public policy objectives, rather than to remedy concrete consumer harm arising from misleading commercial conduct. In doing so, they disregard core FTC principles, including the reasonable consumer standard, materiality requirements, and longstanding limits on liability for omissions and public policy advocacy.

The complaints at issue broadly target general climate-related statements, public policy advocacy, and decades-old trade association speech that do not convey specific, verifiable claims upon which reasonable consumers rely when making purchasing decisions. They further seek to impose disclosure obligations for widely known facts, such as the existence of emissions from fossil fuels, despite the absence of individualized consumer harm or any plausible effect on consumer purchasing behavior. This approach conflicts with FTC precedent, the Green Guides, and First Amendment protections for speech on matters of public concern.

If accepted, this theory of liability would effectively transform consumer protection statutes into de facto environmental regulatory regimes, compelling expansive disclosures unrelated to the transaction at issue and chilling lawful speech. The resulting enforcement risk would raise costs for essential, inelastic goods such as gasoline, disproportionately burdening lower-income consumers who spend a greater share of household income on energy. The misuse of consumer protection authority in this manner undermines both consumer welfare and the integrity of deceptive practices law.

This memorandum urges careful scrutiny of these climate-driven consumer protection cases to ensure continued adherence to established FTC doctrine. Preserving clear boundaries between legitimate consumer protection enforcement and public policy advocacy is essential to protecting consumers, safeguarding free expression, and maintaining the credibility of unfair and deceptive acts and practices enforcement.

INTRODUCTION

Consumer protection laws increase consumer welfare by shielding American consumers from deceptive and unfair practices in trade or commerce, but improper enforcement of these laws is antithetical to their purpose. It chills speech, harms consumer choice, and raises costs to ultimately drive up consumers' cost of living. This is particularly true for essential, inelastic goods, such as gasoline. Because the poorest quintile spend the greatest percentage of their income on gasoline, such misuses of government authority disproportionately harm this country's most vulnerable.[1]

The District's consumer protection law recognizes these foundational principles. It requires courts and enforcers to give "due consideration and weight" to the Federal Trade Commission's interpretation of "unfair or deceptive act or practice" under the FTC Act when construing the same phrase in the District's law. D.C. Code § 28-3901(d) (citing 15 U.S.C § 45(a)). The Complaint filed by the District's Attorney General against oil and gas producers, however, fails to heed this requirement, and it misstates the applicable law by largely ignoring critical elements such as materiality and the reasonable consumer—which specifically delineate the dividing line between *consumer* protection and some other purpose. The Complaint's reasoning is so broad that it could require all product sales to include emissions disclosures. This misuse of consumer protection laws accomplishes little more than driving up costs and ultimately harming consumers.

BACKGROUND

The Complaint alleges "four of the largest oil and gas companies" (Defendants) have misled consumers within the District. Compl. ¶ 1.

The Complaint misstates the relevant legal standard for deceptive acts, and its factual allegations fail to state a claim for multiple reasons, including: (1) the Complaint fails to plausibly allege that a reasonable consumer would be misled by the acts at issue; (2) the Complaint fails to plausibly allege that the acts at issue are likely to affect the purchasing decision of a consumer acting reasonably under the circumstances; and (3) the Complaint improperly targets constitutionally protected speech about matters of public concern.

The acts at issue in the complaint can generally be sorted into four categories:

1) General climate-related statements (such as a company's claim that it was playing a "leading role" in "advancing a low carbon future," Compl. ¶ 130, even though the Defendants have "continued to ramp up fossil fuel production globally and invest in new fossil fuel development," Compl. ¶¶ 98–160).

    a. The Complaint alleges that these statements misled consumers because "many DC consumers" were unaware of the "relationship between their

[1] *See* https://www.aceee.org/sites/default/files/pdfs/transportation_energy_burdens_final_5-13-21.pdf (p. 9).

purchasing behavior and climate change." Compl. ¶ 162. The Complaint claims that this information was material and would have influenced consumer purchasing behavior, attempting to analogize the situation to cigarettes and pesticides. Compl. ¶¶ 162–63, 166. The Complaint also claims that information about Defendants' renewable-energy efforts was "important" to District consumers purchasing gasoline. *See, e.g.*, Compl. ¶ 134.

2) Specific climate-related benefit claims (such as claims that certain types of gasoline result in reduced emissions as compared to other types, Compl. ¶¶ 158–60).

    a. The Complaint alleges that these statements misled consumers into believing that purchasing certain types of gasoline "will sufficiently reduce or reverse the dangers of climate change," Compl. ¶ 8, and that the statements failed to "adequately disclose the known risks of burning fossil fuels," Compl. ¶¶ 174(c), 181(c), 188(c), 195(c). The Complaint alleges that these statements were material because they "deprived and are continuing to deprive consumers of information about the consequences of their purchasing decisions." Compl. ¶ 163.

3) Climate-related omissions (such as gas stations failing to post "facts pertaining to the impact the consumption of fossil fuels ... have on climate change," Compl. ¶ 149).

    a. The Complaint argues that this "deprive[s] consumers of information about the consequences of their purchasing decisions." Compl. ¶ 163. The Complaint alleges these statements were material because consumers warned about the effects of fossil fuel use "might purchase less fossil fuel products, or decide to buy none at all." Compl. ¶ 168.

4) Public policy advocacy statements by trade associations and companies (such as statements that "[f]acts don't support the arguments for restraining oil use," Compl. ¶ 61).

    a. The Complaint relies heavily on allegations related to statements made decades ago by two trade associations to which Defendants allegedly belonged, Compl. ¶¶ 50–65, though neither association is a named defendant and one of the associations stopped operating nearly a quarter-century ago, Compl. ¶ 21.

    b. The Complaint attempts to impute those associations' actions to Defendants because of Defendants' involvement with the associations, such as Defendants' alleged membership with the American Petroleum Institute (API), representation on API's "boards, committees, and task forces," and

"participat[ion] in API strategy, governance, and operation." *See* Compl. ¶ 20(b).

ARGUMENT

I. The Complaint Misstates the Legal Standard for Deceptive Acts

The FTC has long interpreted the term "deceptive acts" to require two elements. An act must be (A) likely to mislead a reasonable consumer and (B) material, meaning that the statement must be "likely to affect the consumer's conduct or decision with regard to a product or service," when the consumer is acting reasonably under the circumstances.[2] The D.C. Code essentially invokes both required elements by reference, referring to statements that have a "tendency to mislead" and misrepresent or omit "material facts."[3]

The Complaint misstates both required elements. First, although the Complaint refers to statements having the "tendency to mislead," essentially reiterating the FTC's standard of "likely to mislead," Compl. ¶¶ 174(a), 181(a), 188(a), 196(a), the Complaint never alleges that the statements would mislead a reasonable consumer.[4] In contrast, the FTC's interpretation requires a statement to be misleading to a *reasonable consumer* as an element of deception.

Second, the Complaint asserts that the statements at issue were material because they were merely "capable of influencing a consumer's decision." Compl. ¶¶ 175, 182, 189, 196. It also states that additional disclaimers "might" have led a consumer to purchase less gasoline, Compl. ¶ 168. In contrast, the FTC's interpretation requires a statement to be *likely* to affect the decision of a consumer acting *reasonably under the circumstances*.[5]

These improper standards are reflected throughout the Complaint, as its allegations relate to statements and omissions that would not mislead a reasonable consumer and would not be likely to affect that consumer's purchasing decision.

II. The Complaint Fails to State a Deceptive Acts Claim for General Climate-Related Statements

Longstanding FTC guidance states that "A representation, omission, or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers' decisions."[6] The Green Guides repeat this standard and must be interpreted within these doctrinal requirements. As explained below, the general climate-related statements listed

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[2] *See* FTC Policy Statement on Deception, § I (Summary), https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.

[3] D.C. Code § 28-3904(e), (f), (f-1); *cf.* https://dictionary.cambridge.org/us/dictionary/english/tendency (dictionary definition stating that "If there is a tendency for something to happen, it is **likely** to happen or it often happens" (emphasis added)).

[4] The only reference to "reasonable" in the Complaint is a demand for "reasonable attorneys' fees." *See* Compl. Prayer for Relief.

[5] *See* FTC Policy Statement on Deception, § I (Summary), https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.

[6] FTC Green Guides § 260.2, https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf; *see* FTC Policy Statement on Deception, § I (Summary).

in the Complaint do not satisfy either element of this legal standard, because: (A) they are not likely to mislead a reasonable consumer, as they do not convey specific, verifiable claims upon which a reasonable consumer could rely, and (B) they are not material, since they are not likely to affect a consumer's purchasing decision. In addition, such statements are not "general environmental benefit" claims under the Green Guides.

A. The General Climate-Related Statements At Issue Are Not Likely to Mislead Reasonable Consumers

The general climate-related statements[7] at issue are not likely to mislead reasonable consumers, because describing a company's attitude about climate-related issues or a company's support for renewable energy or emissions-reduction efforts does not convey a specific, verifiable message "that a reasonable consumer would regard as making a factual claim on which she could rely" when purchasing that company's product.[8] Corporate knowledge does not change the analysis for a general climate-related statement, because the question of deception is viewed not from the perspective of the advertiser, but "from the perspective of a consumer acting reasonably under the circumstances."[9]

A reasonable consumer has no factual claim to "rely" on in a purchasing decision when considering the general climate-related statements in the Complaint. Courts have long held that a deception claim cannot be based on product advertising making general claims on which reasonable consumers do not rely, such as "better ingredients, better pizza," "less is more," or "our sheep live the good life."[10] Recently, a court in *City of New York v. Exxon* ("*City of New York*") correctly applied the same logic to general climate-related statements similar, and in

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[7] For purposes of this document, a statement or issue is "climate-related" if it relates to the earth's past, present, or future climate; climate change; renewable or non-renewable energy; or greenhouse gas emissions, such as carbon dioxide or methane.

[8] *See Dwyer v. Allbirds, Inc.*, 598 F. Supp. 3d 137, 153–54 (S.D.N.Y. 2022); *City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 880 (N.Y. Sup. Ct. 2025); FTC Policy Statement on Deception, §§ II (Likely to Mislead), III (Reasonable Consumer); *Pizza Hut, Inc. v. Papa John's Int'l, Inc.*, 227 F.3d 489, 491, 498–99 (5th Cir. 2000) ("Better Ingredients, Better Pizza," was not an "objectifiable statement of fact upon which consumers would be justified in relying" and was puffery); *see also* FTC Policy Statement on Advertising Substantiation, https://www.ftc.gov/legal-library/browse/ftc-policy-statement-regarding-advertising-substantiation (applying a lower standard to advertising claims that do not make "objective assertions about the item or service advertised").

[9] FTC Policy Statement on Deception § I (Summary).

[10] *Pizza Hut, Inc. v. Papa John's Int'l, Inc.*, 227 F.3d 489, 497–99 (5th Cir. 2000); *Dwyer v. Allbirds, Inc.*, 598 F. Supp. 3d 137, 153–54 (S.D.N.Y. 2022). Although *Allbirds* involved a state-law false advertising claim, the court's decision was based on similar factors and principles used to interpret Section 5 of the FTC Act. *See Dwyer v. Allbirds, Inc.*, 598 F. Supp. 3d 137, 148 (S.D.N.Y. 2022) (to violate state false advertising law, a claim would have to be "misleading in a material way"). Similarly, although *Pizza Hut* involved a false advertising claim under the Lanham Act, the court's decision was based on similar factors and principles used to interpret Section 5 of the FTC Act. *See Pizza Hut, Inc. v. Papa John's Int'l, Inc.*, 227 F.3d 489, 497 ("puffery" may be a statement upon which no reasonable buyer would rely, or a statement so vague that it is a mere expression of opinion); *see also Cook, Perkiss & Liehe, Inc. v. N. California Collection Serv. Inc.*, 911 F.2d 242, 246 (9th Cir. 1990) (noting the similarities between the Lanham Act and FTC Act analyses, and stating that a "common theme" in puffery cases "is that consumer reliance will be induced by specific rather than general assertions").

some cases, identical to the ones at issue in the Complaint here.[11] The *City of New York* court dismissed "corporate greenwashing" claims, including allegations that the defendants "exaggerat[ed]" their "overall investment in clean energy resources," and "misrepresent[ed] the climate benefits" of natural gas by claiming it was "cleaner."[12] The *City of New York* court also dismissed general "product greenwashing" allegations, including statements such as "better than ordinary fuels," "take you further," "breakthrough formulation," "created to let you drive cleaner, smarter and longer," or "Our Best Fuel Ever."[13] The *City of New York* court found all of these claims to be non-actionable.[14]

The Complaint rests upon similarly non-actionable, general climate-related statements to support the theory that Defendants influenced consumers' perception of oil and gas companies, in two primary categories: (1) oil and gas companies portrayed themselves as a "leader in renewable energy" and suggested they had a "diversified energy portfolio," Compl. ¶¶ 174(b), 181(b), 188(b), 195(b); and (2) oil and gas companies "obfuscated" their role in climate change, Compl. ¶ 137.

1. Claims that Oil and Gas Companies "Portrayed Themselves As a Leader in Renewable Energy" and As Having a "Diversified Energy Portfolio"

To support its allegation that oil and gas companies purported to be leaders in renewable energy, the Complaint lists various general climate-related statements, such as:

- Exxon's statement that it was investing in "sustainable and environmentally friendly" energy sources. Compl. ¶ 112.

- Exxon running advertisements that "overwhelmingly emphasize[d] its claimed leadership in research on lowering emissions, algae biofuel, climate change solutions, and clean energy research." Compl. ¶ 116.

- Shell's statement that it was investing in "alternative energy sources" that were "cleaner sources." Compl. ¶ 118.

- Shell's statement that natural gas was fueling ships "with low or no emissions." Compl. ¶ 124.

- BP's statement that it was "one of the major wind energy businesses in the U.S." Compl. ¶ 129.

- BP's statement that natural gas was producing "more energy with fewer emissions." Compl. ¶ 134.

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[11] *Compare City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 872 (N.Y. Sup. Ct. 2025) *with* Compl. ¶¶ 110–34.
[12] *See City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 871–73, 881–83 (N.Y. Sup. Ct. 2025).
[13] *See City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 869–71, 878–81 (N.Y. Sup. Ct. 2025).
[14] *See City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 869–71, 878–83 (N.Y. Sup. Ct. 2025).

- Chevron's statement that it was "investing millions in solar and biofuel technologies." Compl. ¶ 141.

- Chevron's statement that it was pursuing natural gas, which was "cleaner ... energy." Compl. ¶ 144.

These allegations demonstrate the necessity of the doctrinal requirement that statements be specific, verifiable, and something on which a reasonable consumer would rely. The reasonable consumer making a gasoline purchasing decision does not rely upon, and is not likely to be misled by, such vague statements regarding "leadership" or a "diversified" portfolio.[15] For example, the Complaint never defines what makes a company a "leader." The term "leader" could mean absolute spending levels, comparative spending levels, degree of innovation, being a first mover, being in the top quartile in a category, or making more public statements than others. Some of these criteria could easily be met by the millions of dollars on renewable energy that the Complaint concedes each Defendant spent.[16] Compl. ¶¶ 113, 120, 130, 142. A theory that non-specific statements placing a company in a positive light are actionable would outlaw much of advertising and expose companies to improper enforcement based on an enforcer's dislike of the company, rather than actual deceptive practices.[17]

Furthermore, the Complaint never alleges that Defendants sold renewable energy products in the District. Therefore, even to the extent a reasonable consumer could have relied on any of these general climate-related statements in purchasing natural gas, a consumer in the District could not have done so. The Complaint fails to allege how any of these generalized statements would be "likely to mislead consumers acting reasonably under the circumstances" when purchasing gasoline. A reasonable consumer does not rely on the general, unverifiable perception of a company's "leadership" for one product when the consumer is purchasing a different product.

In an effort to recast these general climate-related statements into actionable statements, the Complaint states that Defendants' representations about renewable energy "falsely represented that [their] goods had characteristics and benefits that they do not in fact possess." Compl. ¶¶ 174(b), 181(b), 188(b), 195(b) (each quoting D.C. Code § 28-3904(a)). But none of these statements made claims about the actual goods sold in the District—fossil fuel products like gasoline—and those products apparently worked as expected. A reasonable consumer would not be misled into thinking gasoline had different properties based on factors such as the gasoline seller's level of support for wind farms.[18]

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[15] *See* FTC Green Guides § 260.2; FTC Policy Statement on Deception, § I (Summary).

[16] For example, the Complaint does not allege that other oil and gas companies invested more money into renewable energy than the Defendants did. As such, each of the Defendants may have been "leaders" within the oil and gas industry by investing more in renewable energy than their competitors.

[17] *Cf. In re Boston Beer Co. Partnership*, 198 F.3d 1370, 1372–74 (Fed. Cir. 1999) (upholding finding that "claims of superiority should be freely available to all competitors in any given field to refer to their products or services").

[18] *Cf. City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 872, 882 (N.Y. Sup. Ct. 2025) (oil and gas company's statements about wind energy were not "actionable as related to the sale of a different product (fossil

2. Claims that Oil and Gas Companies "Obfuscated" Their Role in Climate Change

The Complaint also alleges that oil and gas companies minimized their role in climate change, both through decades-past company and trade association statements (discussed in more detail below in Section V), and through more recent statements about those companies' attitudes toward carbon, including:

- Shell's statement that it is "setting the course" for a "lower-carbon mobility future," and that it was a "bigger player than you might expect in this budding movement to realize a cleaner and more efficient transportation future." Compl. ¶ 119.

- BP's statement that "We all want more energy, but with less carbon footprint. That's why at BP we're working to make energy that's cleaner and better." Compl. ¶ 128.

- BP running a "Beyond Petroleum" advertising campaign. Compl. ¶ 126.

- Chevron's statements that it "agree[d]" with various broad propositions, including that "we need renewable energy" and that it was "time oil companies get behind the development of renewable energy," and Chevron therefore was "not just behind renewables," it was "tackling the challenge of making them affordable and reliable on a large scale." Compl. ¶¶ 139, 141.

- Chevron's statements that "if we can't do it right, we won't do it at all" and that "we've got to think long term." Compl. ¶ 143.

- Chevron's statements that natural gas's affordability had helped the U.S. achieve emissions reductions. Compl. ¶ 145.

Again, none of these statements make a specific, verifiable claim that a consumer could rely on in making a gasoline purchasing decision. Instead, these are broad, vague claims about climate-related efforts or the role of various types of energy in the global or U.S. market.

Corporate knowledge does not change the analysis for these statements, because the question of deception is viewed not from the perspective of the advertiser, but "from the perspective of a consumer acting reasonably under the circumstances."[19] For example, BP's decision to change its logo to a "sunburst," thus allegedly "evoking the renewable resource of the sun," *see* Compl. ¶ 126, did not make a factual claim on which a consumer could rely,[20] regardless of whether BP knew internally that it intended to increase its oil and gas production.

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fuels)"); *Lieberson v. Johnson & Johnson Consumer Companies, Inc.*, 865 F. Supp. 2d 529, 537 (D.N.J. 2011) ("Because Plaintiff has not alleged that she purchased or used two of the four baby bath products at issue here, Plaintiff cannot establish an injury-in-fact with regard to those products.").

[19] FTC Policy Statement on Deception § I (Summary).

[20] *See Dwyer v. Allbirds, Inc.*, 598 F. Supp. 3d 137, 153–54 (S.D.N.Y. 2022).

B. The General Climate-Related Statements At Issue Are Not Material

The Complaint's materiality allegations related to general climate-related statements fail because (1) they do not significantly involve an area with which the reasonable consumer would be concerned, and (2) are not likely to affect a consumer's purchasing decision.[21]

For any statement to be deceptive, it must be material, and thus must be "likely to affect a consumer's choice of or conduct regarding a product."[22] Claims may be material if "they significantly involve health, safety, or other areas with which the reasonable consumer would be concerned."[23]

1. The General Climate-Related Statements At Issue Do Not Significantly Involve an Area with Which the Reasonable Consumer Would Be Concerned

The general climate-related statements in the Complaint do not "significantly involve health, safety, or other areas with which the reasonable consumer would be concerned."[24] Generalized alleged harms from decades of atmospheric carbon emissions that cannot be affected by a purchasing consumer are not analogous to the individualized health and safety harms from a consumer inhaling tobacco smoke or ingesting pesticides. Furthermore, a reasonable consumer purchasing gasoline would not be concerned with an oil and gas company's marketing for products not being purchased by consumers and that are not offered directly to consumers, such as natural gas.

The Complaint's comparison of general climate-related advertising to advertising that impacts consumer health demonstrate why the general climate-related claims at issue are not material. The Complaint cites tobacco companies advertising "low-tar cigarettes" while knowing that "any use of cigarettes was harmful." Compl. ¶¶ 150–53. However, this analogy misses a key distinction: tobacco-related advertising may be material to a reasonable consumer's cigarette-purchasing decision *because the consumer may be directly harmed by her purchase and use of the product*.[25] The Complaint similarly argues that consumers have "demanded healthier choices" for fruits and vegetables once aware of the effects of pesticides, Compl. ¶ 166, but, once again, this relates to a purchase decision that *directly harms the consumer*.

In contrast to inhaling smoke from cigarettes and ingesting pesticides, a consumer's purchase and use of fossil fuels, even over an entire lifetime, cannot have any health or safety effect by

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[21] *See* FTC Policy Statement on Deception, §§ I (Summary), IV (Materiality); *see, e.g.*, *Pizza Hut, Inc. v. Papa John's Int'l, Inc.*, 227 F.3d 489, 497–99 (5th Cir. 2000).
[22] FTC Policy Statement on Deception § IV (Materiality) ("In other words, it is information that is important to consumers.").
[23] FTC Policy Statement on Deception § IV (Materiality).
[24] FTC Policy Statement on Deception § IV (Materiality).
[25] *See* FTC Policy Statement on Deception, § IV (Materiality) (noting that health and safety are material topics to a consumer). The issues raised by the Complaint are not material health and safety issues, because neither a consumer's health nor their safety would be affected by a fossil fuel purchase, and so neither issue would affect a reasonable consumer's decision.

itself. Not only is there no individualized harm to a consumer from purchasing, there is no individualized benefit from forgoing a purchase—if the consumer never bought fossil fuels, she would still experience the same climate-related effects as everyone else. A consumer acting reasonably under the circumstances thus will not find it material that her purchase will add an inconsequential amount of carbon emissions, because such purchase will not result in "the consumer's detriment."[26]

If the Complaint's theory were valid, then every company would have to disclose emissions for every product, and this would transform a standard consumer protection law into a sweeping environmental mandate. For example, warnings would be required for emissions from any product or service, even though no reasonable consumer would alter their purchases based on the inconsequential emissions from a steak or a zucchini. Inconsequential levels of emissions from a consumers' actions do not "significantly involve" health and safety, and essentially every product has emissions embedded in its value chain.

A reasonable consumer of gasoline also would not be concerned with a company's actions regarding products the consumer is not purchasing, such as solar power, wind power, or natural gas. [27] As the *City of New York* court noted, claims related to those topics are not about oil and gas products, and those sales are what the Complaint here purports to address.[28] *See* Compl. ¶¶ 172, 179, 186, 193. For example, the Complaint admits that BP owns an entire gigawatt of wind capacity in the U.S., but disparages this as only being 1% of the U.S. market, and argues that BP's description of itself as "one of the major wind energy businesses in the U.S." was "materially false." Compl. ¶ 129. The Complaint does not explain why a reasonable consumer in the District considering the purchase of BP's gasoline would change their decision based on what percentage of the U.S. wind turbine market was constructed by BP. Similarly, the Complaint asserts that Chevron's "portrayal of itself as a renewable energy leader was false and misleading," based on the percentage of Chevron's capital spending, Compl. ¶ 140, but this again simply ignores the materiality element.

2. The General Climate-Related Statements At Issue Are Not Likely to Affect a Reasonable Consumer's Purchasing Decision

The general climate-related statements at issue in the Complaint are not likely to affect a reasonable consumer's purchasing decision because that consumer is aware of basic, widely known facts related to emissions. A reasonable consumer understands that she must brush and floss to maintain oral hygiene, and cannot solely rely on chewing teeth-whitening gum.[29]

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[26] FTC Policy Statement on Deception § I (Summary). The Complaint cites the fact that cities like Cambridge, Massachusetts, have made the political decision to require "climate change warning labels" to be placed on gas pumps, *see* Compl. ¶ 167, but this public policy choice does not prove that a reasonable consumer's decision would be affected.

[27] *See City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 872, 882 (N.Y. Sup. Ct. 2025) (oil and gas company's statements about wind energy were not "actionable as related to the sale of a different product (fossil fuels)").

[28] *See, e.g.*, *City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 872, 882 (N.Y. Sup. Ct. 2025).

[29] *Stuart v. Cadbury Adams USA, LLC*, 458 F. App'x 689, 691 (9th Cir. 2011) (mem.).

Similarly, a reasonable consumer purchasing "fuel, motor oil, and other fossil fuel-related services," Compl. ¶¶ 172, 179, 186, 193, understands that a company has not "cut fossil fuels from their brand," Compl. ¶ 109. The Complaint's fragmented materiality arguments contending that additional information would lead consumers to either purchase less fuel, or switch to companies with fewer emissions are defeated by two widely known facts: (1) using fossil fuels results in emissions, and (2) no single consumer's or company's activity can change the global accumulation of carbon.[30]

The Complaint alleges that if consumers were "armed with full and accurate information about climate change and its primary driver," those consumers would be "less likely to purchase fossil fuel products." Compl. ¶ 49. However, a reasonable consumer "armed with full and accurate information" would neither switch companies, nor cease purchasing fossil fuel products, because the consumer would be aware of the obvious fact that the scale of the consumer's purchases cannot affect climate change. Each consumer's purchases produce carbon that is harmless at an individual level. According to the Complaint's theory, the alleged harm occurs only after a global and decades-long accumulation of carbon in the atmosphere affects global temperature, changes the climate, and causes consequences that affect the consumer. *See, e.g.*, Compl. ¶ 36. These consequences occur regardless of the choices made by any consumer, or even any country of consumers.[31]

In fact, the Complaint implicitly concedes that the amount of emissions from a particular purchase will not affect a reasonable consumer's decision, and alleges that individual choices cannot materially affect climate change. The Complaint alleges that Defendants misled consumers by suggesting that purchasing a gasoline product with comparatively fewer emissions will "reduce ... the dangers of climate change." Compl. ¶ 8. The Complaint also criticizes an advertisement encouraging consumers to drive less, because it allegedly "portrayed minor changes in consumer choices ... as sufficient to address environmental problems such as climate change." Compl. ¶¶ 136, 138. Yet the Complaint's materiality claims depend on the incorrect assumption that a reasonable consumer would believe that minor changes in their own choices (e.g. driving less and purchasing less gasoline) would somehow affect climate change. As the *City of New York* court put it, the Complaint cannot "have it both ways."[32] A reasonable consumer who understands that fossil fuels cause emissions also understands that her

[30] *Cf. State ex rel. Jennings v. BP Am. Inc.*, No. N20C-09-097 MMJ CCLD, 2024 WL 98888, at *19 (Del. Super. Ct. Jan. 9, 2024) (noting that "the general public had knowledge of or had access to information about the disputes, regarding the existence of climate change and effects, decades prior to the expiration of the five-year limitations period").

[31] *See, e.g.*, https://www.kennedy.senate.gov/public/2023/5/kennedy-to-biden-official-you-want-us-to-spend-50t-and-you-don-t-know-if-it-s-going-to-reduce-world-temperatures; https://www.epw.senate.gov/public/index.cfm/global-warming (EPA modeling showing U.S. power-sector rules would have no meaningful impact on global temperatures).

[32] *See City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 879 (N.Y. Sup. Ct. 2025) ("The City cannot have it both ways by, on one hand, asserting that consumers are aware of and commercially sensitive to the fact that fossil fuels cause climate change, and, on the other hand, that the same consumers are being duped by Defendants' failure to disclose that their fossil fuel products emit greenhouse gases that contribute to climate change.").

purchases do not affect climate change, and her purchasing decision thus will not be affected by general climate-related statements.[33] As noted above, this distinguishes the general climate-related claims in the Complaint from cigarette claims, where even a single purchase can negatively affect a consumer.

C. The General Climate-Related Statements At Issue Are Not "General Environmental Benefit" Claims Under the Green Guides

The general climate-related statements in the Complaint are not representations that a company "offers a general environmental benefit" under the Green Guides. Although the Green Guides caution against making "general environmental benefit" claims for products, the Guides state that such claims typically are (1) both "specific" and "far-reaching," or (2) "convey that the item or service has no negative environmental impact."[34] The general climate-related statements here do not fit either criterion, and any interpretation of the Green Guides must fit into the well-established FTC precedent discussed above, which the Green Guides reiterate.[35]

First, the general climate-related statements in the Complaint lack the specificity element. Claims such as those listed above do not advertise any of the Defendants' products as having a "specific" and "far-reaching" benefit. Instead, they generally describe limited claims like Defendants' efforts to invest in renewable energy, a product which was not alleged to have been sold in the District. By contrast, the Green Guides give an example of an ad specifically stating the far-reaching effect that a product is "greener" than before.[36]

Second, the general climate-related statements in the Complaint do not "convey that the item or service has no negative environmental impact." In fact, many of the statements (such as an advertisement suggesting that consumers should try to drive less, Compl. ¶ 136) actually *reinforce* that widespread gasoline use could have a negative environmental impact. In addition, the general climate-related statements in the Complaint suggest that oil and gas companies, which are widely known to produce products that generate emissions, have taken some efforts to support renewable energy. These do not convey anything about the item or service actually being sold in the District. By contrast, the Green Guides give examples of an entire brand labeled "Eco-Friendly," which is a far cry from any example in the Complaint.[37] A reasonable consumer would not construe the general climate-related statements in the Complaint as

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[33] Even if a few consumers make this decision, a "company is not liable for every interpretation or action by a consumer," and instead is responsible only for reasonable interpretations or actions. FTC Policy Statement on Deception § III (Reasonable Consumer).
[34] *See* FTC Green Guides § 260.4.
[35] FTC Green Guides § 260.2, https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf; *see* FTC Policy Statement on Deception, § I (Summary), https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.
[36] *See* FTC Green Guides § 260.4 (Example 2). Although the Complaint repeatedly alleges that Defendants touted their products as "green" or "greener," Compl. ¶¶ 8, 146, 148, 154, the Complaint provides only one example in which either word was used, Compl. ¶ 157, and that example refers to an engine lubricant, which is not burned and does not create emissions in the same way gasoline does.
[37] *See* FTC Green Guides § 260.4 (Example 1).

suggesting that oil and gas have "no negative environmental impact," but merely as claims that some efforts have been taken to mitigate one aspect of that impact.

III. The Complaint Fails to State a Deceptive Acts Claim for Specific Climate-Related Benefit Claims

Specific, verifiable benefit claims regarding a particular climate-related aspect of a product (i.e. "now with 10% fewer emissions than the prior model") require substantiation, and are deceptive if the claim is likely to mislead the reasonable consumer and is material.[38] The specific climate-related benefit claims in the Complaint are not deceptive because: (A) they are not alleged to lack substantiation, and are not required to provide additional disclosures; and (B) they are not material.

A. To Avoid Being Misleading, Specific Climate-Related Benefit Claims Simply Require Substantiation

If a company can substantiate a specific and measurable claim regarding a particular climate-related aspect of a product (such as a claim that a new model of a car has 10% fewer emissions than the previous model), then that claim is not misleading.[39]

A climate-related claim must be specific and measurable to potentially be actionable. For example, a court found that "Less is More" was non-actionable puffery but that "50% Less Mowing" was not, because the latter was "specific and measurable."[40] Applying that standard to similar allegations in the Complaint, BP's general climate-related statement that natural gas is "cleaner-burning" is not specific and measurable—it does not specify what substance is being compared, or how much cleaner the gas is burning. Compl. ¶ 134. In contrast, BP makes a specific climate-related benefit claim for a specified use of its natural gas products, claiming that natural gas is "burn[ing] 50% cleaner than coal in power generation." Compl. ¶ 134. Similarly, Chevron's advertisement of Techron fuel by stating "less is more" is non-actionable puffery, but its "up to 50% cleaner" engine claim is specific and measurable. *See* Compl. ¶ 160(b). The Complaint does not allege that any of these claims were incorrect or that these companies lacked substantiation for the claims, and it does not even allege that natural gas was sold in the District. Instead, it argues that the companies should have made other disclosures in conjunction with their various specific climate-related benefit claims. *See, e.g.*, Compl. ¶¶ 134, 160(d). As discussed below, that is an incorrect interpretation of the law, and these claims do not require disclosure of: (1) facts already known by a reasonable consumer, (2) corporate

[38] *See, e.g.*, *Fed Trade Comm'n v. Volkswagen Group of America*, Complaint (2016), https://www.ftc.gov/system/files/documents/cases/160329volkswagen_cmpt.pdf (complaint alleging that VW deliberately cheated on federal tests and engaged in deceptive advertising with false statements such as "42mpg. 30% fewer emissions" (¶ 26(A)) and "meet[s] the strictest EPA standards in the U.S." (¶ 27(A))). Specific climate-related benefit claims also are not claims of a "general environmental benefit" because they do not convey that an item or service offers a "far-reaching" benefit or "convey that the item or service has no negative environmental impact." *See* FTC Green Guides § 260.4.

[39] *See, e.g.*, FTC Policy Statement Regarding Advertising Substantiation.

[40] See *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1145 (9th Cir. 1997).

activities, objectives, or knowledge, or (3) alternative forms of measurement, especially for products not being sold to consumers.

1. The Specific Climate-Related Benefit Claims At Issue Do Not Require Disclosure of Facts Already Known by a Reasonable Consumer

The Defendants were not required to pair the specific climate-related benefit claims at issue with reminders of well-known facts about the company's products. The Green Guides use an example of a company claiming their plastic beverage bottles are more "environmentally friendly" because they are now made with "25% less plastic," and never suggest that such an advertisement would have to disclose that: (1) the bottle still has some plastic, (2) plastic manufacturing produces plastic waste, or (3) manufacturing as a whole is not "environmentally friendly."[41]

The Complaint incorrectly suggests otherwise, taking issue with advertisements such as:

- Exxon advertised Mobil 1, stating that it "can help advance engine performance and improve fuel economy." Compl. ¶ 157.

- Shell advertised its Nitrogen Enriched Cleaning System and V-Power Nitro+ Premium, stating those fuels had "fewer emissions." Compl. ¶ 158.

- BP advertised Invigorate, stating that fuels with Invigorate were different from "ordinary fuels" that had "increased emissions." Compl. ¶ 159.

- Chevron advertised Techron, stating that Techron could clean up carburetors, fuel injectors, and intake valves, "giving you reduced emissions." Compl. ¶ 160.

(Notably, the *City of New York* court found that several of these allegations were "distortions of statements that have been taken out of context."[42]) The Complaint does not contest the truthfulness of any of these statements. Instead, the Complaint alleges that the statements misled consumers by not "disclosing the key role fossil fuels play in causing climate change." Compl. ¶¶ 156–60. The Complaint suggests that the companies must remind consumers of the patently obvious fact that fossil fuel products with *fewer* emissions still have *some* emissions. *See* Compl. ¶ 148. The Complaint even goes so far as to assert that these statements represent to consumers that "using these products will sufficiently reduce or reverse the dangers of climate change." Compl. ¶ 8.

As stated above, the Complaint cannot plausibly allege that reasonable consumers do not know that fossil fuels create emissions, or that consumers do know but still are misled by ads that truthfully advertise which gasoline products produce fewer emissions than others.[43] As for the

[41] *See* FTC Green Guides § 260.4 (Example 5).
[42] *See City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 879–80 (N.Y. Sup. Ct. 2025) (providing additional context for BP's "ordinary fuels" statement and Shell's "fewer emissions" statement).
[43] *See City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 879 (N.Y. Sup. Ct. 2025) ("The City cannot have it both ways by, on one hand, asserting that consumers are aware of and commercially sensitive to the fact that fossil

claim that Defendants somehow represented to consumers that buying gasoline would *reverse* climate change, no reasonable consumer would interpret a claim of "reduced emissions" for a gasoline product as a claim that using the product would "reverse the dangers of climate change."[44]

2. The Specific Climate-Related Benefit Claims At Issue Do Not Require Disclosure of Corporate Activities, Objectives, or Knowledge

The Defendants' specific climate-related benefit claims at issue also did not need disclosures related to other climate-related factors or business activities, such as the fact that the Defendants' overall emissions have increased. For example, when the Green Guides discuss the "25% less plastic" example noted above, the Guides do not suggest that the manufacturer has to issue a disclaimer if: (1) the manufacturer's overall plastic production increased in the past year or is expected to increase in the future, or (2) the manufacturer expects to sell 30% more of the new-design bottles due to market conditions, thus creating more plastic overall.[45]

In contrast, the Complaint relies heavily on the fact that the Defendants have increased oil and gas production and expect to continue to do so. Compl. ¶¶ 101–04. That information does not need to be included with a specific climate-related benefit claim for that claim to not mislead a reasonable consumer. For example, Chevron's claim that Techron can clean engine parts and therefore reduce a car's emissions, Compl. ¶ 160(c)–(d), does not mislead a reasonable consumer even if Chevron recently set oil production records, Compl. ¶ 218.

3. The Specific Climate-Related Benefit Claims At Issue Do Not Require Disclosure of Alternate Forms of Measurement, Especially for Products Not Being Sold to Consumers

The Defendants did not need to evaluate or list all potential alternative calculations of the specific climate-related benefit claims at issue.[46] For example, when the Green Guides discuss the "25% less plastic" example noted above, the Guides note that if the advertisement says, "Environmentally-friendly improvement. 25% less plastic than our previous packaging," that statement conveys that the product now is "more environmentally friendly" with the plastic reduction, and requires the advertiser to have substantiation of the claimed corresponding environmental benefit.[47] But the Guides also clarify that to substantiate the claim, "the marketer

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fuels cause climate change, and, on the other hand, that the same consumers are being duped by Defendants' failure to disclose that their fossil fuel products emit greenhouse gases that contribute to climate change.").

[44] *See City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 880–81 (N.Y. Sup. Ct. 2025) ("No reasonable consumer would be misled by these subjective, non-specific, and vague statements to believe that the use of the Invigorate, Shell V-Power® NiTRO+, or Synergy™ fuel products does not contribute to climate change.").

[45] *See* FTC Green Guides § 260.4 (Example 5).

[46] *See Dwyer v. Allbirds, Inc.*, 598 F. Supp. 3d 137, 150–51 (S.D.N.Y. 2022) (Allbirds' claim was substantiated by a calculation method and was not deceptive even though an alternative calculation method would have come to a different conclusion; a reasonable consumer would not have expected a different method of calculation; Allbirds never indicated that it incorporated other specific factors into its calculation).

[47] FTC Green Guides § 260.4 (Example 5).

likely can analyze the impacts of the source reduction *without* evaluating environmental impacts throughout the packaging's life cycle."[48]

Yet the Complaint alleges that the Defendants had to describe "the total emissions over the full lifecycle" for natural gas products when making specific or general climate-related claims. Compl. ¶ 134, *see* Compl. ¶¶ 124, 144. For instance, the Complaint does not contest BP's claim that natural gas burns "50% cleaner than coal in power generation," but instead argues that BP should have also included "important information about natural gas production and transportation emissions." Compl. ¶ 134. The Complaint makes similar allegations about Shell's claim that natural gas was "cleaner-burning," Compl. ¶ 123, and Chevron's claim that natural gas is "cleaner ... energy," Compl. ¶ 144. The Complaint also takes issue with Exxon's claim that biodiesel could reduce transportation emissions, Compl. ¶¶ 111, 115, not contesting Exxon's claim, but arguing that biodiesel is mostly made of fossil fuel.

These advertisements were not likely to mislead reasonable consumers, especially given that the Complaint never alleges that any of the Defendants sold biodiesel or natural gas to consumers in the District. *See* Compl. ¶¶ 13(i), 14(g), 15(g), 16(h). The companies did not have to describe other possible ways of measuring how "clean" one source is compared to another, nor did they have to "evaluat[e] environmental impacts throughout the [product]'s life cycle" in order to avoid misleading consumers purchasing a *different* fuel source than the one advertised.[49]

B. Specific Climate-Related Benefit Claims Must Be Material to Be Deceptive

As noted above, for a statement to be deceptive, it must be likely to mislead a reasonable consumer ***and*** must be material.[50] Therefore, even if a specific climate-related claim about a product is likely to mislead a reasonable consumer, it is not deceptive unless it also would affect the purchasing decision of a reasonable consumer.[51]

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[48] FTC Green Guides § 260.4 (Example 5) (emphasis added).
[49] FTC Green Guides § 260.4; *see Dwyer v. Allbirds, Inc.*, 598 F. Supp. 3d 137, 150–51 (S.D.N.Y. 2022).
[50] *See* FTC Policy Statement on Deception, § I (Summary). The Green Guides reiterate this point, and expressly recognize that claims must be material to be deceptive. Green Guides § 260.2. The Green Guides focus their guidance on the likely-to-mislead element. *See* FTC Green Guides § 260.1(d) ("The examples provide the Commission's views on how reasonable consumers likely interpret certain claims.") Thus, the fact that an example is presented in the Green Guides as misleading does not mean that statement also is material. *Cf.* FTC Green Guides §§ 260.3(c) (Example 1), 260.4 (Example 4) (both stating that the examples likely convey a false impression, without analyzing materiality).
[51] *See* FTC Green Guides § 260.2 ("A representation, omission, or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers' decisions."); *cf.* FTC Green Guides § 260.6 (Example 7 states that the marketers should be able to "substantiate all material claims reasonably communicated"); § 260.9(c) (Example 2 states that trace amounts of formaldehyde do not cause "material harm," and thus, a "formaldehyde free" statement was not deceptive).

1. The Specific Climate-Related Benefit Claims At Issue Are Not Material

The Complaint fails to allege that the specific climate-related claims it identifies are material to consumers. For example, it states that Chevron advertises that Techron can clean engine parts, and that this cleaning results in reduced emissions from driving. Compl. ¶ 160(c). The Complaint does not dispute this fact, but claims this advertising "emphasize[s] the products' supposed environmentally beneficial qualities without disclosing the key role fossil fuels play in causing climate change." Compl. ¶ 160(d). The "key role" of fossil fuels would be unlikely to affect the gasoline purchasing decision of a consumer acting reasonably under the circumstances, especially given the lack of impact from any individual consumer's purchases.[52] Redefining materiality to include such tangential disclosures with any specific climate-related benefit claim would threaten to trigger "an avalanche of trivial information ... that is hardly conducive to informed decisionmaking."[53] If sellers had to make "complete disclosures" about any factor that could be important to any consumer, a "television ad would be completely buried under such disclaimers," and the burden "would very possibly represent a net harm for consumers."[54] In contrast, if the Complaint alleged that Techron could not help clean engine parts, the lack of an engine-cleaning feature would change the benefit a reasonable consumer expected to receive from having a better-running engine. But the Complaint does not do so. In addition, these statements could not have affected a reasonable consumer's purchasing decision in the District in the last fifteen years, as the Complaint acknowledges Chevron has not directly or indirectly sold any gasoline in the District since 2010,[55] and does not specify when the statements at issue were made.[56]

Finally, the specific climate-related benefit claims in the complaint were comparative claims designed to promote one type of gasoline over another. Those representations would not be material to a consumer's decision of whether to purchase gasoline *at all*, yet that decision is the one the Complaint questions. *See, e.g.*, Compl. ¶ 166 (alleging that consumers could choose not to purchase products or reduce their purchases of a product).

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[52] *Cf. City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 882 (N.Y. Sup. Ct. 2025) ("Plaintiff provides no legal authority for the notion that statements about unrelated product (e.g., alternative fuels such as natural gas) or technologies (e.g., wind and solar energy) are actionable as related to the sale of a different product (fossil fuels).").
[53] *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 448–49 (1976) (discussing the risk of setting the materiality standard too low in the securities context); *see Retail Wholesale & Dep't Store Union Loc. 338 Ret. Fund v. Hewlett-Packard Co.*, 845 F.3d 1268, 1277 (9th Cir. 2017) (applying *TSC Industries* to a claim that HP misled consumers about its corporate culture, and finding that "[i]t simply cannot be that a reasonable investor's decision would conceivably have been affected by HP's compliance with SEC regulations requiring publication of ethics standards").
[54] *In the Matter of Int'l Harvester Co.*, 104 F.T.C. 949, 1060 (1984).
[55] Compl. ¶ 16(h).
[56] *See* Compl. ¶ 160.

IV. The Complaint Fails to State a Deceptive Acts Claim for Climate-Related Omissions

An omitted climate-related fact is deceptive only if the fact is necessary to prevent a specific advertisement from being misleading to a reasonable consumer, and the fact is material.[57] The climate-related omissions discussed by the Complaint do not satisfy either element, because they are: (A) not misleading; and (B) not material.

A. The Climate-Related Omissions At Issue Do Not Make an Advertisement Misleading to a Reasonable Consumer

Although the Complaint often lacks clarity on which alleged facts the Attorney General contends Defendants should have disclosed at which times, various categories of omissions at issue are discussed below: (1) omissions in connection with general climate-related statements, (2) omissions in connection with specific climate-related benefit claims, and (3) pure omissions.

1. Omissions in Connection with the General Climate-Related Statements At Issue

As discussed above, the general climate-related statements at issue are not misleading, because they did not convey a specific, verifiable fact upon which a reasonable consumer could rely when making a purchasing decision. Therefore, no fact must be included to prevent those general climate-related statements from being misleading to a reasonable consumer.[58] For example, the Complaint admits that Chevron truthfully stated that it was spending millions of dollars on solar and biofuel. Compl. ¶ 141. The omitted fact that Chevron has spent much more on oil and natural gas production than it has on solar and biofuel, Compl. ¶ 141, did not need to be included to avoid a reasonable consumer being misled, and there is no identifiable "detriment" to the consumer who purchased gasoline.[59] A reasonable consumer does not expect an oil and gas company to abandon its core business to try to assist with global issues, even if the company advertises that it has devoted some of its resources to assisting with those issues.

2. Omissions in Connection with the Specific Climate-Related Benefit Claims At Issue

As discussed above, although specific climate-related benefit claims may need to be substantiated in order to not be misleading to a reasonable consumer, the claims at issue do not have to include a disclosure of facts already known to a reasonable consumer, information about corporate activities, objectives, or knowledge, or alternative forms of measurement.[60] So, for example, truthful claims about some fossil fuel products having fewer emissions than others are not misleading to a reasonable consumer, even without a reminder that fossil fuels still

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[57] *See* FTC Policy Statement on Deception § I (Summary).
[58] *See City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 878 (N.Y. Sup. Ct. 2025) (rejecting plaintiff's argument that oil and gas company's statements were misleading because they were not "accompanied by a disclosure" about fossil fuels' effects on the environment).
[59] *See* FTC Policy Statement on Deception § I (Summary).
[60] *See supra* Section III.A.

create some emissions. *See* Compl. ¶¶ 157–60. As the FTC has emphasized, "Not all omissions are deceptive, even if providing the information would benefit consumers."[61]

3. Pure Omissions At Issue

The FTC "does not treat pure omissions as deceptive," with "pure omissions" being subjects "upon which the seller has simply said nothing, in circumstances that do not give any particular meaning to his silence."[62] Some of the Complaint's allegations appear to concern pure omissions, such as:

- the Complaint's claim that "In connection with selling gasoline and other fossil fuel products to DC consumers, Defendants failed to inform consumers about the effects of their fossil fuel products in causing and accelerating the climate crisis," Compl. ¶ 9;

- the Complaint's statement that "Defendants also fail to require their vendors and third-party retail outlets to disclose facts pertaining to the impact the consumption of fossil fuels and their 'cleaner' alternatives have on climate change when selling Defendants' products," Compl. ¶ 149; or

- the Complaint's suggestion that Defendants should be placing "climate change warning labels on gasoline pumps," Compl. ¶ 167.

These pure omissions are not deceptive. For example, a recent D.C. case found that a gas station selling cigarettes did not commit deceptive practices by failing to proactively inform consumers that menthol cigarettes were more addictive than other cigarettes.[63] The same logic applies to a gas station's sale of gasoline, which does not need to be accompanied by warning labels on pumps in order for sellers to avoid engaging in deceptive acts and practices.[64] The Complaint attempts to have it "both ways,"[65] arguing that consumers are aware of emissions but also need to be affirmatively reminded of them in order to avoid a deceptive act or practice. *Compare* Compl. ¶ 98 ("public awareness has caught up" to Defendants' "knowledge of their products' contribution to a growing climate crisis") *with* Compl. ¶ 167 ("fossil fuel warning labels that accurately relay risk can educate consumers").

B. The Climate-Related Omissions At Issue Are Not Material

The allegedly omitted climate-related facts at issue are not material to consumers. Those facts are not likely to affect purchasing decisions by a consumer acting reasonably under the

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[61] FTC Policy Statement on Deception, n.4.

[62] *In the Matter of Int'l Harvester Co.*, 104 F.T.C. 949, 1064–65 (1984) ("the range of [pure] omissions is potentially infinite"); *cf. Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, 601 U.S. 257, 263 (2024) (securities rule prohibiting the omission of a material fact necessary to make a statement not misleading did not extend to "pure omissions").

[63] *See, e.g.*, *Reeves v. 7-Eleven, Inc.*, No. 1:22-CV-3533-RCL, 2025 WL 2779930, at *2–*3 (D.D.C. Sept. 30, 2025).

[64] *Cf. In the Matter of Int'l Harvester Co.*, 104 F.T.C. 949, 1061 (1984) ("The Commission does not ordinarily seek to mandate specific conduct or specific social outcomes, but rather seeks to ensure simply that markets operate freely, so that consumers can make their own decisions.").

[65] *See City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 879 (N.Y. Sup. Ct. 2025).

circumstances, for reasons including that (1) these climate-related facts (such as that fossil fuel use causes emissions) are already known by reasonable consumers; (2) a consumer's purchase will not affect the climate or that consumer's health or safety; (3) most of the climate-related facts do not relate directly to the product (such as a claim about support for solar projects); and (4) reasonable consumers are unlikely to make fossil fuel-purchasing decisions based on a fossil fuel company's offering of other products in a different market.

The Complaint's allegations that companies must remind consumers about widely known product facts are public policy arguments disguised as deception claims. For example, the Complaint frequently compares fossil fuels to smoking, and cites the example of health warnings on tobacco products, Compl. ¶ 167, but this comparison ignores two key facts: (1) as noted above, tobacco products harm their individual purchasers based on those purchasers' use of the products, but fossil fuels do not; and (2) the health warnings on tobacco products are *required by specific federal law*.[66]

The Complaint seeks to punish as a deceptive practice the absence of similar warnings for fossil fuels, *see* Compl. ¶ 167. But the Complaint's assertion of deceptiveness has no limiting principle, and many different categories of products would be required to bear disclosures that do not relate to harm to the consumer from the purchase decision and therefore do nothing more than overload consumers with general public policy information. This theory would vest the District's Attorney General with impermissible authority to punish those with whom he has a political disagreement by forcing them to make public policy disclosures he deems important. The failure to include these disclosures simply is not a deceptive act or practice under the consumer protection laws.

V. The Complaint Improperly Targets Statements Related to Matters of Public Concern, Including Those Made by Trade Associations and Other Third Parties

The First Amendment protects open and free debate on public policy issues, whether those statements are made by individuals, companies, or trade associations.[67] Speech on energy and climate-related issues is undoubtedly a matter of public concern, and the Complaint improperly targets such speech both from trade associations and from energy companies. The Complaint also improperly attempts to impute liability for trade association conduct to companies, without plausibly alleging direct participation in wrongful and injurious conduct or control.

[66] *See, e.g.*, https://www.cdc.gov/tobacco-surgeon-general-reports/about/history.html (brief timeline of federal law on tobacco advertising).

[67] *See, e.g.*, *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 365 (2010) ("No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations.").

A. The Portions of the Complaint that Relate to Company Statements Inextricably Intertwined with Public Policy Matters Do Not State Valid Claims for Deceptive Acts or Practices

1. Speech on Energy and Climate-Related Policy Issues Receives Heightened Protection Because It Is Inextricably Intertwined with Matters of Public Concern

Many individuals, companies, trade associations, and non-profits have made statements related to energy and climate-related policy issues for years since they are topics of widespread public debate. Indeed, the Supreme Court recognized climate change as being a "sensitive political topic[]," which receives the highest level of protection under the First Amendment,[68] and courts have specifically recognized that the First Amendment protects "scientific expression and debate."[69] The public import of this debate continues, with the Environmental Protection Agency reconsidering its 2009 endangerment finding.[70] In sum, there is an ongoing debate about energy policy as it relates to affordability, reliability, environmental protection, national security, climate change, and many other topics.

Commercial speech "does no more than propose a commercial transaction."[71] When commercial speech is "inextricably intertwined" with a matter of public concern, it is treated as speech on a matter of public concern and not mere commercial speech.[72] Heightened protection clearly applies here, where the Complaint targets forms of expression specifically utilized for matters of public concern, such as lobbying members of Congress and writing op-eds in opposition to a proposed treaty.[73] *See* Compl. ¶ 64. A statement taking either side of a public debate on climate issues, or positioning a company's actions within this debate, does not

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[68] *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 913-14 (2018); *see W. Virginia v. Env't Prot. Agency*, 597 U.S. 697, 729-30 (2022) (concluding that "how much coal-based generation there should be over the coming decades" is a decision of "'economic and political significance'" (citation omitted)).

[69] *Bd. of Trs. Of Leland Stanford Jr. Univ. v. Sullivan*, 773 F. Supp. 472, 747 (D.D.C. 1991)).

[70] 90 Fed. Reg. 36288 (Aug. 1, 2025), https://www.govinfo.gov/content/pkg/FR-2025-08-01/pdf/2025-14572.pdf.

[71] *Harris v. Quinn*, 573 U.S. 616, 648 (2014); *see also City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 423 (1993). However, even in situations where "the advertiser's interest is a purely economic one," this "hardly disqualifies [the advertiser] from protection under the First Amendment." *Virginia State Board of Pharmacy*, 425 U.S. at 762; *see 303 Creative LLC v. Elenis*, 600 U.S. 570, 594 (2023).

[72] *See Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 796 (1988) ("we do not believe that the speech retains its commercial character when it is inextricably intertwined with otherwise fully protected speech");
Pac. Gas & Elec. Co. v. Pub. Utilities Comm'n of California, 475 U.S. 1, 8–9 (1986) (plurality opinion) (commercial newsletter received "full protection of the First Amendment," as it "extend[ed] well beyond speech that proposes a business transaction" and "include[d] the kind of discussion of 'matters of public concern' that the First Amendment both fully protects and implicitly encourages"); *cf. Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 561 (1980) (commercial speech is "expression related **solely** to the economic interests of the speaker and its audience" (emphasis added)).

[73] *Cf. In re Asbestos Sch. Litig.*, 46 F.3d 1284, 1290 (3d Cir. 1994) (finding "no doubt" that trade organization's efforts to lobby Congress "were constitutionally protected").

constitute an actionable misrepresentation under consumer fraud laws, even if an enforcing regulator embraces the opposite side of the debate.[74]

Protected speech on matters of public concern does not lose its protection based on the speaker's identity.[75] Enforcement cannot be justified by the mere claim that public policy speech is false, because even false statements "are not beyond constitutional protection."[76] The potential for politically targeted enforcement will chill even non-false statements if the speaker is afraid that the statement could be false, or that a true statement could nonetheless be the target of an enforcement action.[77] Such enforcement actions also harm *recipients'* rights to vigorous debate on both sides of a public policy issue without the distortion of threatened punitive enforcement actions.[78]

Enforcement actions like the Complaint also infringe companies' rights to advocate for government action. This violates the *Noerr-Pennington* doctrine, which establishes a "rule that liability cannot be imposed for damage caused by inducing legislative, administrative, or judicial action."[79] These concerns are particularly acute within the District, where companies' advertising is likely to be focused on influencing lawmakers on public policy,[80] not on commerce from the District's comparatively limited consumer market, from which several of the Defendants have largely withdrawn. *See* Compl. ¶¶ 13(i) (in 2009, Exxon sold all stations it owned in the District), 15(g) (in 2005, BP sold all stations it owned in the District), 16(h) (Chevron stopped licensing its brand name to any stations in the District in 2010).

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[74] *Cf. Thornhill v. State of Alabama*, 310 U.S. 88, 103–04 (1940) (although picketer's speech may induce people not to patronize a business, government violated the First Amendment by prohibiting the speech because "labor relations are not matters of mere local or private concern," and government cannot "impair the effective exercise of the right to discuss freely industrial relations which are matters of public concern").

[75] *See First Nat. Bank of Bos. v. Bellotti*, 435 U.S. 765, 777 (1978) ("The inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual."); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 365 (2010) ("No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations."); *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011) ("Commercial speech is no exception" to constitutional protections against viewpoint discrimination.).

[76] *See, e.g.*, *281 Care Committee v. Arneson*, 766 F.3d 774, 783 (8th Cir. 2014).

[77] *See, e.g.*, *United States v. Alvarez*, 567 U.S. 709, 733–34 (2012) (Breyer, J., concurring) ("the threat of criminal prosecution for making a false statement can inhibit the speaker from making true statements, thereby 'chilling' a kind of speech that lies at the First Amendment's heart"; "those who are unpopular may fear that the government will use that weapon [prosecuting false statements] selectively").

[78] *See Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.* 425 U.S. 748, 756 (1976) ("Freedom of speech presupposes a willing speaker. But where a speaker exists, as is the case here, the protection afforded is to the communication, to its source and to its recipients both.").

[79] *Brownsville Golden Age Nursing Home, Inc. v. Wells*, 839 F.2d 155, 160 (3d Cir. 1988); *see Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961) ("It is neither unusual nor illegal for people to seek action on laws in the hope that they may bring about an advantage to themselves and a disadvantage to their competitors."); *United Mine Workers of America v. Pennington*, 381 U.S. 657 (1965)).

[80] *See, e.g.*, https://jacobin.com/2023/10/rtx-raytheon-lockheed-dc-metro-advertising; https://www.all.org/press-releases/planned-parenthood-life-saver-ads-target-lawmakers-networks-reject-pro-life-response.

2. The Complaint Improperly Targets Company Speech on Matters of Public Concern

Here, the Complaint targets company speech that is, at a minimum, "inextricably intertwined" with speech on matters of public concern, such as:

- Mobil arguing against "quick-fix measures" that "could pose grave economic risks for the world." Compl. ¶ 78 & Fig. 1.

- Exxon stating that a governmental report on climate change put the "political cart before a scientific horse." Compl. ¶ 80.

- Shell stating that "the issue of global warming has given rise to heated debate," which the Complaint claims was misleading because "there was no serious debate *among scientists*." Compl. ¶¶ 85–86 (emphasis added).

- Shell stating that hydrogen fuel cells were "sustainable in the long-term." Compl. ¶ 121.

- BP stating that "We all want more energy, but with less carbon footprint." Compl. ¶ 128.

- BP stating that natural gas "can play a supporting role" in supplying energy when solar was unavailable, a role the Complaint argues could be filled by battery storage instead. Compl. ¶¶ 131, 133.

- Chevron stating that that it wanted to "do it right" and "think long term," with the Complaint arguing that "right" means "in a sustainable and environmentally friendly way." Compl. ¶¶ 143–44.

- Chevron encouraging consumers to drive less and stating that it "agree[d]" with various broad propositions, including that "we need renewable energy" and that it was "time oil companies get behind the development of renewable energy." Compl. ¶¶ 138, 139, 141.

Statements like these set out company positions on matters of public concern. The statements are representing the company's position on matters of public policy, rather than making representations about specific products. Despite the Complaint's clear belief that the "right" approach to energy policy would be to abandon fossil fuels as not being "environmentally friendly," this is a public policy dispute. The Complaint improperly attempts to restrict one side of the debate through purported enforcement of a law against deceptive and unfair trade practices.

Future climate-related projections, climate-related technological advancements, and climate-related policy developments all involve significant uncertainty. Similarly, the costs and benefits of various types of energy are a matter of public concern subject to considerable debate. A company's general statements on both types of issues (whether made directly or through a group that the company actually has the authority to control) would be understood by a reasonable consumer to be opinion advocacy on a matter of public concern or speculation on

future events, and thus would not be deceptive absent specific false factual claims.[81] For example, the *City of New York* court rejected claims based on an oil and gas company's statement that it was "setting the course to develop" the "cleaner fuel alternatives" that the "world will need."[82] That statement involves speculation (what the world will need in the future / the technological possibility of developing cleaner fuel) and opinion advocacy (the world will need cleaner fuel), and does not convey specific, verifiable claims about the company's products on which a reasonable consumer could rely in making a purchasing decision.

3. The Complaint Also Improperly Targets Trade Association Speech on Matters of Public Concern

The Complaint also frequently targets trade association speech from decades ago that is, at a minimum, "inextricably intertwined" with speech on matters of public concern, such as:

- The API arguing, in 1997, that "Facts don't support the arguments for restraining oil use." Compl. ¶ 61.

- The Global Climate Coalition (GCC) disputing, in 1995, that there was a scientific "consensus that man-made emissions of greenhouse gases are leading to a dangerous level of global warming." Compl. ¶ 57.

Trade association statements like these are clearly aimed at matters of public concern. In fact, the Complaint recognizes that API's stated mission is to influence public policy, Compl. ¶ 20(d), and that GCC was "formed to oppose greenhouse gas emission reduction initiatives," Compl. ¶ 21(a).

Deceptive-practices laws should not be used to chill public policy advocacy with which the enforcer may disagree. The Complaint takes issue with trade associations' engagement in classic forms of political speech such as talking to the media, writing op-eds, and lobbying members of Congress, as part of a "blatant attempt to disrupt international efforts to negotiate any treaty curbing greenhouse gas emissions." Compl. ¶ 64. Yet the Supreme Court has rejected attempts to stop corporations from participating in America's political discourse,[83] and has affirmed that political speech is "at the core of what the First Amendment is designed to protect."[84] The Complaint's intrusion into these classic areas of First Amendment protection is

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[81] *See* FTC Policy Statement on Deception, § I (Summary), § II (Likely to Mislead), & § III (Reasonable Consumer); *City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 872, 881 (N.Y. Sup. Ct. 2025) (oil and gas company statements, such as "we're working to make our energy cleaner and better" or "exploring how to ... create biofuel on a vast scale," were "generic in nature and implicate broad policy initiatives and statements, as opposed to the sale of Defendants' fossil fuel or non-fossil fuel products," and were not actionable).

[82] *City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 881 (N.Y. Sup. Ct. 2025).

[83] *See, e.g.*, *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010); *cf. In re Asbestos Sch. Litig.*, 46 F.3d 1284, 1290 (3d Cir. 1994) (there could be "no doubt that at least some of [the trade organization's] activities were constitutionally protected," such as lobbying Congress).

[84] *Morse v. Frederick*, 551 U.S. 393, 403 (2007) (citations omitted).

not supported by deceptive trade practices law, such as the FTC Act or the District's equivalent.[85]

B. The Complaint Improperly Imputes the Speech of Trade Associations to Their Members

The Complaint also improperly imputes trade association speech to companies, which further chills speech on public policy matters. If a trade association or other third party engages in deceptive speech, a company is only liable for that speech if: (1) it "*directly participates* in deception when it engages in deceptive acts or practices that are injurious to customers with at least some knowledge of the deception" or (2) it "knows of another's deceptive practices and has the *authority to control* those deceptive acts or practices, but allows the deception to proceed."[86] The need for these direct action or control requirements is to avoid chilling participation in associations that are beneficial to democracy and public policy debates.[87] If any member can be held strictly liable for the actions of the association, then few will join. This extends beyond industry trade groups to many associations—even those joined by judges and lawyers.

1. There Are No Allegations of Direct Participation in Wrongful and Injurious Conduct Here

The Complaint does not plausibly allege direct participation in wrongful and injurious conduct for two reasons.

First, to meet the "direct participation" standard, the practices must be "injurious to customers,"[88] and as discussed above, the Complaint does not allege that customers received anything less than what they bargained for when they purchased gasoline from Defendants. No consumer was injured by their own gasoline purchase, and claims that trade associations tried to "sow doubt and confusion about climate change," Compl. ¶ 63, do not allege an injury to customers. The Complaint's allegations about trade association conduct also include efforts directed at lawmakers, such as a "direct outreach program to inform and educate members of Congress." *See, e.g.*, Compl. ¶ 64. These actions are even further removed from any potential injury to consumers.

Second, "direct participation" must be based on a company's *own* wrongful conduct—as quoted above, direct participation for a company can be found when "**it** engages in deceptive acts or practices injurious to customers with at least some knowledge of the deception," not when

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[85] *Cf. New York Times Co. v. Sullivan*, 376 U.S. 254, 272 (1964) ("erroneous statement[s] ... must be protected if the freedoms of expression are to have the breathing space they need to survive" (cleaned up); the First Amendment's protection "does not turn upon the truth, popularity, or social utility of the ideas and beliefs which are offered" (cleaned up)).

[86] *Fed. Trade Comm'n v. LeadClick Media*, 838 F.3d 158, 170 (2d Cir. 2016) (emphasis added).

[87] *Cf. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961) ("In a representative democracy such as this, these branches of government act on behalf of the people and, to a very large extent, the whole concept of representation depends upon the ability of the people to make their wishes known to their representatives.")

[88] *Fed. Trade Comm'n v. LeadClick Media*, 838 F.3d 158, 170 (2d Cir. 2016).

another party (such as a trade association) engages in such practices.[89] For example, direct participation in wrongful conduct was found where two individuals helping run a business opportunity scheme personally made misrepresentations about the earning potential available from those opportunities.[90] Direct participation in wrongful conduct also was found where a defendant was engaging in actions such as "recruiting and paying affiliates who used fake news sites for generating traffic, managing those affiliates, suggesting substantive edits to fake news pages, and purchasing banner space for fake news sites on legitimate news sources."[91] In contrast, the Complaint's allegations that *trade associations* engaged in deceptive acts or practices typically do not allege that the *Defendants* engaged in those practices. *See, e.g.*, Compl. ¶¶ 64–65 (alleging that an API team engaged in public policy advocacy and that some of the Defendants merely "contributed to the development of the plan"). If the trade association engages in unfair and deceptive acts and practices, the association may be liable for those acts and practices.[92] But that liability cannot be imputed to members that did not engage in their own deceptive acts and practices.[93] As the Supreme Court has cautioned, for civil "liability to be imposed by reason of association alone, **it is necessary to establish that the group itself possessed unlawful goals and that the individual held a specific intent to further those illegal aims**."[94] Participating in or facilitating the group's discussions, operations, or governance (including sitting on the board or serving as an officer or other leadership role) simply are not the same thing as actually *engaging* in deceptive acts.

2. There Are Also No Allegations of Control Here

Likewise, a company does not have the "authority to control" a group solely by virtue of being a member of the group;[95] contributing time, money, or resources to the group;[96] participating in, coordinating, or facilitating the group's discussions or operations;[97] sitting on the board or

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[89] *See Fed. Trade Comm'n v. LeadClick Media*, 838 F.3d 158, 170 (2d Cir. 2016) (emphasis added).
[90] *Fed. Trade Comm'n v. Kitco of Nevada, Inc.*, 612 F. Supp. 1282, 1292 (D. Minn. 1985).
[91] *Fed. Trade Comm'n v. LeadClick Media*, 838 F.3d 158, 171–72 (2d Cir. 2016).
[92] *See, e.g.*, *In the Matter of Indoor Tanning Association*, Complaint (2010), https://www.ftc.gov/sites/default/files/documents/cases/2010/05/100519tanningcmpt.pdf (FTC complaint against trade association for its own representations).
[93] *Cf. Juhl v. Airington*, 936 S.W.2d 640, 643 (Tex. 1996) ("We believe that the liability of members of a group should be analyzed in terms of the specific actions undertaken, authorized or ratified by those members.").
[94] *NAACP v. Claiborne Hardware*, 458 U.S. 886, 920 (1982) (emphasis added).
[95] *See, e.g.*, *In re Asbestos Sch. Litig.*, 46 F.3d 1284, 1290 (3d Cir. 1994) (defendant was not responsible for trade association's conduct under civil conspiracy and concert of action theories, even though defendant was a member of the trade association; "A member of a trade group or other similar organization does not necessarily endorse everything done by that organization or its members.").
[96] *See, e.g.*, *In re Asbestos Sch. Litig.*, 46 F.3d 1284, 1290 (3d Cir. 1994) (defendant's donation of at least $50,000 to trade organization was "plainly insufficient" to allow defendant to be held liable for trade association's conduct under civil conspiracy and concert of action theories).
[97] *See, e.g.*, *In re Asbestos Sch. Litig.*, 46 F.3d 1284, 1290 (3d Cir. 1994) (fact that defendant's representatives attended meetings "could not rationally be viewed as sufficient to show that Pfizer specifically intended to further any allegedly tortious and constitutionally unprotected activities committed by the SBA or its other members"); *Emerson v. Mut. Fund Series Tr.*, 393 F. Supp. 3d 220, 260–61 (E.D.N.Y. 2019) ("The mere exercise of influence is not sufficient to establish control." (cleaned up)); *Orient Plus Int'l Ltd. v. Baosheng Media Grp. Holdings Ltd.*, No.

serving as an officer or other leadership role;[98] or knowing of, casting a vote in favor of, approving of, or otherwise consenting to a group's actions without "ultimate authority to review and approve or disapprove of" the group's actions.[99] None of those facts necessarily mean that a company can actually dictate any of the group's actions, and the Complaint's boilerplate allegations of control do not plausibly plead facts showing control.[100] The fact that members or board members *collectively* could control a group does not mean that any individual member or board member controls the group.[101]

The API, for example, has nearly 600 members.[102] None of those members have been plausibly alleged to have control over API's actions, regardless of whether a company is sued alone or along with other member-companies.[103] A trade association may be liable for its acts and practices,[104] but that liability cannot be imputed to individual member companies that do not individually have the authority to control the association.

1:24-CV-00744 (JLR), 2025 WL 2613530, at *24–25 (S.D.N.Y. Sept. 10, 2025) (audit committee's meetings and discussions with management did not establish that committee members had power to control management's reports).

[98] *Compare Fed Trade Comm'n v. Moses*, 913 F.3d 297, 307 (2d Cir. 2019) (defendant had "authority to control" when it held a 50% ownership stake in the companies, was their co-director and general manager, and had the power to hire and reprimand employees); *with In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 352 F. Supp. 2d 429, 458–59 (S.D.N.Y. 2005) (defendant with 30% ownership stake did not have control under securities laws); *and In re Alstom SA*, 406 F. Supp. 2d 433, 488 (S.D.N.Y. 2005) ("status as officer or committee member is generally not enough to constitute control" under securities laws; CEO was found to have control of a report not because of his title but because he signed the report).

[99] *Fed Trade Comm'n v. LeadClick Media*, 838 F.3d 158, 172 (2d Cir. 2016) (defendant had "authority to control" when it possessed the "ultimate authority to review and approve or disapprove of" its affiliate's actions); *Emerson v. Mut. Fund Series Tr.*, 393 F. Supp. 3d 220, 260–61(E.D.N.Y. 2019) ("The fact that Catalyst Advisors managed the Fund's strategy, without more, fails to allege actual control and merely constitutes a boilerplate statement of control status."); *Ho v. Duoyuan Glob. Water, Inc.*, 887 F. Supp. 2d 547, 578 (S.D.N.Y. 2012) (the "power to influence managerial decisions is not the same as [the] power to direct the management and policies of the primary violator" (cleaned up)).

[100] *See, e.g.*, *Emerson v. Mut. Fund Series Tr.*, 393 F. Supp. 3d 220, 260–61(E.D.N.Y. 2019) ("[B]oilerplate allegations that a party controlled another based on officer or director status are insufficient.").

[101] *See In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 352 F. Supp. 2d 429, 458–59 (S.D.N.Y. 2005) (dismissing claims against Verizon and holding that Verizon did not have "control" of Flag under securities laws even though it was a 30% minority shareholder and could appoint three out of nine members of Flag's board of directors; to the extent Verizon convinced other members to take a course of action, it was a "result of the exercise of their powers of persuasion, not through actual control" of Flag); *In re Alstom SA*, 406 F. Supp. 2d 433, 492–93 (S.D.N.Y. 2005) (ability to appoint a minority of the board does not "create power to direct management and policies," and thus does not constitute "sufficient control" for securities liability).

[102] https://www.api.org/membership.

[103] *See In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 352 F. Supp. 2d 429, 457–59 (S.D.N.Y. 2005) (dismissing claims against Verizon even though it was a 30% minority shareholder and could appoint three out of nine members of Flag's board of directors; dismissing or allowing claims against certain directors based primarily on whether they signed the statement at issue).

[104] *See, e.g.*, *In the Matter of Indoor Tanning Association*, Complaint (2010).

VI. The Complaint Impermissibly Seeks to Impose Liability for Conduct from Decades Ago

The Complaint overreaches by litigating decades-old conduct far outside the statute of limitations that applies to the federal government, which created the District. The D.C. Code instructs courts to provide "due consideration and weight" to FTC interpretations of the term "unfair or deceptive act or practice." D.C. Code § 28-3901(d). D.C. courts also should consider the context and confines in which the FTC exercises its authority.

Although it has been granted specific home-rule powers, the District remains a creature of the federal government, *see* D.C. Code § 1-102; U.S. Const. art. I, § 8, clause 17, and it is not itself a sovereign entity.[105] The District's power to address unfair and deceptive acts and practices thus should be exercised within the same boundaries as the federal government. The FTC's remedies for actions on unfair or deceptive acts or practices are subject to statutes of limitations ranging up to five years.[106] The federal government has determined that it is in the public interest to limit potential penalties for unfair and deceptive acts and practices to five years. The District cannot override that conclusion based on the idea that nullum tempus is an aspect of sovereignty, because the District is not a sovereign.[107] The Complaint's attempt to impose penalties for conduct that occurred decades ago goes well beyond federal authority and is an inappropriate use of unfair and deceptive acts and practices laws. It also is incompatible with the deceptive acts analysis outlined above, which relies on the perspective of an objectively-determined reasonable consumer, by forcing factfinders to try to divine the perspective of a reasonable consumer in 1988—over 35 years ago. *See, e.g.*, Compl. ¶ 49.[108]

The Complaint also raises laches concerns. If the District were to be treated like a sovereign state in order to invoke the benefit of nullum tempus, the Complaint would appear to be barred by laches due to the District's "unreasonable and unjustified" delays, which prejudiced

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[105] *See, e.g.*, *Metro. R. Co. v. D.C.*, 132 U.S. 1, 10–11 (1889) (finding that the District is a municipal corporation and stating that "[i]t is just as much for the public interest and tranquil[]ity that municipal corporations should be limited in the time of bringing suits as that individuals or private corporations should be").

[106] *See, e.g.*, 15 U.S.C. § 57b(d), 28 U.S.C. § 2462; *cf. City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 883–85 (N.Y. Sup. Ct. 2025) (dismissing claims related to oil and gas company advertising from more than three years prior to the complaint, under New York's statute of limitations); *State ex rel. Jennings v. BP Am. Inc.*, No. N20C-09-097 MMJ CCLD, 2024 WL 98888, at *19 (Del. Super. Ct. Jan. 9, 2024) (dismissing claims brought under Delaware deceptive-practices law, which has a five-year statute of limitations). Both *City of New York* and *Jennings* involved dated claims similar to the ones brought in the Complaint here.

[107] *See Metro. R. Co. v. D.C.*, 132 U.S. 1, 10–12 (1889) (limiting the time in which a municipality can bring suit is "for the public interest"; finding that nullum tempus ran against the District, and that the prerogative belongs to the sovereign alone, not to municipalities).

[108] A few states have held that no statute of limitations applies to their consumer-protection laws, typically relying on the *nullum tempus* doctrine. *See, e.g.*, *Connecticut v. Sandoz, Inc.*, No. 3:20-CV-00802-MPS, 2025 WL 3043397, at *23 (D. Conn. Oct. 31, 2025) ("Defendants concede that under the doctrine of *nullum tempus occurrit regi*, which prohibits time-based defenses from being asserted against sovereign claims, there is no limitations period for claims under the Arizona and Iowa Consumer Fraud Acts and none for claims brought under Pennsylvania law."). Those states are sovereign entities, not creations of the federal government like the District.

Defendants.[109] The Complaint alleges that public awareness "caught up" to Defendants' contribution to the climate crisis, leading the Defendants to engage in allegedly misleading advertising as early as 2000.[110] Yet despite this "public awareness" and the public nature of the advertising at issue, the District did not bring its complaint until 2020. This delay prejudiced Defendants, who could have been put on notice a decade ago that the District viewed the claims in the Complaint as deceptive. Instead, the District sat on its hands for over a decade while Defendants continued to engage in climate-related advertising, and the District now faults them for doing so. Even if laches were not to apply to the District, the court should approach the question of equitable relief with "great hesitancy" given the dated nature of the claims.[111]

CONCLUSION

Consumer protection laws serve a vital role in safeguarding consumers from deceptive and unfair practices, but that role is undermined when those laws are stretched to advance contested public policy objectives unrelated to consumer decision-making or demonstrable harm. The climate-driven consumer protection cases discussed in this memorandum depart from longstanding FTC principles by disregarding the reasonable consumer standard, materiality requirements, and constitutional limits on regulating speech.

Careful adherence to established FTC doctrine is essential to preserving the integrity of unfair and deceptive acts and practices enforcement. Ensuring that consumer protection laws remain focused on actual deception, rather than serving as a proxy for environmental regulation, will protect consumers, uphold free expression, and maintain predictable, principled enforcement standards.

[109] *See, e.g.*, *New York v. Facebook, Inc.*, 549 F. Supp. 3d 6, 36 (D.D.C. 2021), *aff'd sub nom. New York v. Meta Platforms, Inc.*, 66 F.4th 288 (D.C. Cir. 2023) (dismissing antitrust claims from 46 states and the District of Columbia).
[110] Compl. ¶¶ 98, 126.
[111] *Cf. Fed. Trade Comm'n v. Facebook, Inc.*, 560 F. Supp. 3d 1, 32 (D.D.C. 2021) (quoting *United States v. Pullman Co.*, 50 F. Supp. 123, 127 (E.D. Pa. 1943)) (noting that laches did not apply to the federal government in antitrust cases but suggesting the possibility of limiting relief).