

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

<p>GMO FREE USA d/b/a TOXIN FREE USA, P.O. Box 8273, New Fairfield, CT 06812, and</p> <p>BEYOND PESTICIDES, 701 E Street SE, Suite 200, Washington, DC 20003,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>SAATVA, INC., 8 Wright St, Westport, CT 06880,</p> <p style="text-align: center;">Defendant.</p>	<p>COMPLAINT 2024-CAB-005259</p> <p><u>DEMAND FOR JURY TRIAL</u></p>
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PREAMBLE

Plaintiffs GMO Free USA d/b/a Toxin Free USA (“TFUSA”) and Beyond Pesticides (“BP”) (collectively, “Plaintiffs”) bring this action against Defendant Saatva, Inc. (“Saatva”) regarding the false and deceptive marketing and sale of its crib mattresses (the “Product”).¹ Saatva represents to District of Columbia consumers that the Product is nontoxic, safe, natural, and eco-friendly. The Product is not nontoxic, safe, natural, or eco-friendly. Instead, it contains per- and polyfluoroalkyl substances (“PFAS”), a group of synthetic chemicals that are extremely resistant to degradation, persist indefinitely in the environment, bioaccumulate in blood and body tissues, and can be harmful to humans and the environment, even at very low levels. This is especially concerning considering that the Product is meant for infants and toddlers, who as explained *infra*, are a vulnerable population when it comes to PFAS exposure. This Complaint is on behalf of the general public of the District of Columbia, in the interest of consumers. This is

¹ Plaintiffs allege that any Saatva products that contain PFAS and are represented as “natural,” “nontoxic,” “eco-friendly,” and/or “safe,” or are represented with any environmental sustainability language, are within the scope of this Complaint. Plaintiffs reserve the right to add future Products as a result of further discovery. *See Crib Mattress*, Saatva, <https://www.saatva.com/mattresses/crib-mattress> (last visited Aug. 12, 2024).

not a class action, and no class certification will be sought. Plaintiffs allege the following based upon personal knowledge, information, belief, and the investigation of Counsel:

INTRODUCTION

1. This is a consumer-protection case alleging deceptive marketing representations about a mattress marketed for use by infants and toddlers. Plaintiffs TFUSA and BP are nonprofit, public interest organizations dedicated to consumer protection and education. Plaintiffs seek to end the deceptive marketing and advertising at issue. Plaintiffs do not seek money damages.

2. Defendant Saatva manufactures and sells mattresses, furniture, bedding, and bath products for adults, children, and pets, including infant crib mattresses such as the Product at issue here, both in stores and online, to consumers in the District of Columbia.

3. Saatva markets the Product to D.C. consumers as “nontoxic,” “safe,” “natural,” “eco-friendly” and “chemical-free.”

4. Saatva also uses third-party “certifications” to market itself as a sustainable company and further to assure D.C. consumers that the Product is safe and environmentally sound.

5. Contrary to Saatva’s representations, however, testing of the Product reveals the presence of synthetic PFAS chemicals. Specifically, testing has found the following PFAS:

6:2 FTOH-2-Perfluorohexyl ethanol;
Perfluoropentanoic acid (PFPeA);
1H,1H,2H,2H-Perfluorooctane sulfonic acid (6:2 FTS);
Perfluorohexanoic acid (PFHxA);
Perfluorobutanoic acid (PFBA);
Perfluoroheptanoic acid (PFHpA);
Perfluoropropionic acid (PFPrA);
and 6:2 FTCA.

6. PFAS, such as those found in the Product, are not organic or natural, are not safe for humans or the environment, and would not be expected in a mattress marketed as “nontoxic,” “safe,” “natural,” “eco-friendly” and/or “chemical-free.”

7. PFAS are a group of synthetic chemicals that are used in household products, including bedding and other textiles, for stain and water resistance.

8. PFAS are entirely manmade and do not occur in nature.

9. PFAS are known to be toxic to humans, even at very low levels.²

10. Furthermore, PFAS are “forever chemicals,” meaning they do not break down naturally in the environment. Use of PFAS in manufacturing textiles and products leads to the accumulation of PFAS in soil, water, humans, and elsewhere in the environment, threatening other organisms.³

11. Consumers have grown increasingly aware of and concerned about PFAS and the presence of PFAS in their bodies, the environment, and the products they use.⁴

12. As a result, there is a growing consumer-advocacy movement to eliminate PFAS from various products.⁵

13. On October 18, 2021, underscoring the gravity of the PFAS threat, the Biden-Harris Administration announced accelerated efforts to protect Americans from PFAS on the basis that these substances can cause “severe health problems” and persist in the environment once released, “pos[ing] a serious threat across rural, suburban, and urban areas.”⁶

² Abrahm Lustgarten, et al., *Suppressed Study: The EPA Underestimated Dangers of Widespread Chemicals*, ProPublica (June 20, 2018, 4:54 PM), <https://www.propublica.org/article/suppressed-study-the-epa-underestimated-dangers-of-widespread-chemicals>; Linda S. Birnbaum, *The Perils of PFAS*, Gillings School of Public Health, UNC (Feb. 12, 2021), <https://sph.unc.edu/wp-content/uploads/sites/112/2019/08/The-Perils-of-PFAS-UNC-Final-2.12.21.pdf>.

³ Nat’l Inst. of Env’t Health Sciences (“NIEHS”), *Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)*, Nat’l Inst. of Health U.S. Dept. of Health & Human Servs., <https://www.niehs.nih.gov/health/topics/agents/pfc/index.cfm> (last visited Aug. 14, 2024); Francisca Pérez et al., *Accumulation of Perfluoroalkyl Substances in Human Tissues*, 59 *Env’t Int’l* 354 (2013).

⁴ LastWeekTonight, *PFAS: Last Week Tonight with John Oliver (HBO)*, YouTube (Oct. 4, 2021), <https://www.youtube.com/watch?v=9W74aeuqsiU> (demonstrating consumer awareness of the issue).

⁵ Elicia Mayuri Cousins, et al., *Risky Business? Manufacturer and Retailer Action to Remove Per- and Polyfluorinated Chemicals from Consumer Products*, *NEW SOLUTIONS: A J. of Env’t & Occupational Health Policy* 29(2), 242-65 (2019).

⁶ *FACT SHEET: Biden-Harris Administration Launches Plan to Combat PFAS Pollution*, The White House (Oct. 18, 2021), <https://bit.ly/3DZvZba>; see also *FACT SHEET: Biden-Harris Administration Combatting PFAS*

14. In April 2024, the Environmental Protection Agency set a first-ever national limit on PFAS in drinking water for PFOA and PFOS, as the latest science reflects that “there is no level of exposure to these two PFAS without risk of health impacts.”⁷ In fact, the executive branch has stated that “exposure to PFAS has been linked to deadly cancers, impacts to the liver and heart, and immune and developmental damage to *infants and children*.”⁸

15. Saatva’s representations mislead D.C. consumers into believing that the Product is not made with synthetic, environmentally damaging, unsafe chemicals like PFAS, when in fact, the Product is made with such chemicals. Thus, Saatva’s marketing of the Products is false and misleading to D.C. consumers.

STATUTORY FRAMEWORK

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

17. The CPPA makes it a violation for “any person” to, *inter alia*:

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

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

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

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

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

Pollution to Safeguard Clean Drinking Water for All Americans, The White House (June 15, 2022), <https://bit.ly/3Hf4Vt0>.

⁷*Final PFAS National Primary Drinking Water Regulation*, EPA (Apr. 10, 2024), <https://www.epa.gov/system/files/documents/2024-04/drinking-water-utilities-and-professionals-technical-overview-of-pfas-npdwr.pdf>.

⁸ *Biden-Harris Administration Finalizes First-Ever National Drinking Water Standard to Protect 100M People from PFAS Pollution*, EPA (Apr. 10, 2024), <https://www.epa.gov/newsreleases/biden-harris-administration-finalizes-first-ever-national-drinking-water-standard> (emphasis added).

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

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

18. While the CPPA enumerates a number of specific unlawful trade practices, *see* D.C. Code § 28-3904, the enumeration is not exclusive; a main purpose of the CPPA is to “assure that a just mechanism exists to remedy all improper trade practices.” D.C. Code § 28-3901 (b)(1); *see also, e.g., Dist. Cablevision Ltd. P’ship v. Bassin*, 828 A.2d 714, 722-23 (D.C. 2003); *Osbourne v. Capital City Mortg. Corp.*, 727 A.2d 322, 325-26 (D.C. 1999); *Atwater v. D.C. Dep’t of Consumer & Reg. Affairs*, 566 A.2d 462, 465 (D.C. 1989).

19. A violation of the CPPA may occur regardless of “whether or not any consumer is in fact misled, deceived or damaged thereby.” *Id.* § 28-3904.

20. The CPPA “establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.” *Id.* § 28-3901(c). The statute “shall be construed and applied liberally to promote its purpose.” *Id.*

21. Plaintiffs in this case are nonprofit, public interest organizations statutorily empowered pursuant to D.C. Code Section 28-3905(k)(1)(C) & (D) to represent the interests of District of Columbia consumers.

22. Because Plaintiffs are public interest organizations, they may act on behalf of the general public and bring any action that an individual consumer would be entitled to bring:

[A] public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice.

Id. § 28-3905(k)(1)(D)(i). Subparagraph (A) provides: “A consumer may bring an action seeking relief from the use of a trade practice in violation of a law of the District.” Pursuant to § 28-3901(c), placing misinformation into the D.C. marketplace is a trade practice in violation of the CPPA. Accordingly, Plaintiffs have standing to challenge Saatva’s misrepresentations about the Product in the District.

23. A public interest organization (*see* D.C. Code § 28-3901(15)) may act on behalf of the interests of consumers, *i.e.*, the general public of the District of Columbia, so long as the organization has “sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” *Id.* § 28-3905(k)(1)(D)(ii). As set forth in this Complaint, *see infra* ¶¶ 96-105, Plaintiffs are organizations dedicated to consumer advocacy and have previously represented consumers in similar actions under the CPPA. Plaintiffs have a sufficient nexus to D.C. consumers to represent their interests adequately.

24. Alternatively, a nonprofit organization (*see* D.C. Code § 28-3901(14)) that has purchased or received a good in order to test or evaluate its qualities, as Plaintiff TFUSA has done here, has standing under the CPPA to act on behalf of itself and the general public and bring an action as a “tester” organization:

A nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.

Id. § 28-3905(k)(1)(C).

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

26. This action does not seek money damages. Instead, Plaintiffs seek to end the unlawful conduct directed at D.C. consumers, *i.e.*, Saatva’s false and deceptive labeling and marketing of the Product. Remedies available under the CPPA include “[a]n injunction against the use of the unlawful trade practice.” *Id.* § 28-3905(k)(2)(D), (F). Plaintiffs also seek declaratory relief in the form of an order holding Saatva’s conduct to be unlawful in violation of the CPPA and requests its attorneys’ fees and costs incurred in bringing this action.

I. Defendant Represents That the Product Is Nontoxic, Safe, Natural, Eco-Friendly, and Chemical-Free.

27. On its website, as replicated in the image below, Saatva markets its crib mattress Product for infants and toddlers with representations such as “nontoxic crib mattress for little ones”⁹ and states that the Product contains “eco-friendly materials that are better for you and the planet.”¹⁰

Crib Mattress

Our dual-sided nontoxic crib mattress for little ones



28. Saatva promises: “We do not use any harmful chemicals or sprays in any of our mattresses.”¹¹

⁹ *Crib Mattress*, *supra* note 1.

¹⁰ *Our Green Initiatives*, Saatva, <https://pages.saatva.com/green-initiatives> (last visited Aug. 12, 2024).

¹¹ *Crib Mattress*, *supra* note 1.

29. Further, as seen in the screenshot from Saatva’s website below, Saatva claims its Product has “safety built into every layer.”¹²

Dual-sided with comfort and safety built into every layer

30. Saatva’s website states that its “dual-sided baby mattress is designed with the safety and unique sleep needs of babies and toddlers in mind.”¹³

31. Saatva promises that its crib mattress contains a “[n]ontoxic natural thistle flame barrier, [and *no*] fiberglass or *toxic chemical sprays*.”¹⁴ and that the Products are “made with at least 95% organic fiber, *free of toxic chemicals*, colored with *nontoxic* dyes, and meet strict social and *environmental criteria*.”¹⁵

32. Additionally, as seen in the image below, Saatva advertises its Product as “GREENGUARD Gold Certified,”¹⁶ which according to Saatva means that the Product “meet[s] the highest standards for low chemical emissions, helping to reduce indoor air pollutants and the risk of daily exposure to potentially harmful substances like VOCs.”¹⁷



¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* (emphasis added)

¹⁵ *What is GOTS?*, Saatva, <https://saatvahelp.saatva.com/hc/en-us/articles/360043989234-What-is-GOTS> (last visited Aug. 12, 2024).

¹⁶ *Crib Mattress*, *supra* note 1.

¹⁷ *Our Green Initiatives*, *supra* note 10.

- Our **GREENGUARD® Gold*** & **eco-INSTITUT®*** certified latex mattresses meet the highest standards for low chemical emissions, helping to reduce indoor pollutants and the risk of daily exposure to potentially harmful substances like VOCs

33. In addition to promoting the purported Greenguard certification, Saatva also advertises two other third-party certifications of the Product: “Cradle to Cradle GOLD Certified™”¹⁸ and “OEKO-TEX® Standard 100.”¹⁹ The representations of the certification seals below are taken from Saatva’s website.



34. Saatva also points to its use of all “eco-friendly” materials in the Product, including “natural latex,” as shown in the website screenshot below.²⁰

¹⁸ *Crib Mattress*, *supra* note 1 (emphasis added).
¹⁹ *Our Green Initiatives*, *supra* note 10 (emphasis added).
²⁰ *Id.*

Eco-friendly materials

Every Saatva Crib Mattress features:

- Cover made with organic cotton
- Guardin™ botanical antimicrobial treatment
- Cradle to Cradle®* GOLD certified natural latex
- Recycled steel coils
- GOTS®* certified organic New Zealand wool
- Chemical-free flame barrier is OEKO-TEX® Standard 100 certified
- GREENGUARD® Gold certified to help reduce indoor air pollution and your family's risk of daily chemical exposure to potentially harmful substances like volatile organic compounds (VOCs)

**Cradle to Cradle Certified® is a registered trademark of Cradle to Cradle Products Innovation Institute
GOTS® (Global Organic Textile Standard) is a registered trademark of Global Standard gGmbH
GREENGUARD Gold is a trademark of UL LLC*

II. Because It Contains PFAS, the Product Is Not Nontoxic, Safe, Natural, Eco-Friendly, or Chemical-Free.

35. Contrary to Saatva's representations, the Product is not nontoxic, safe, natural, eco-friendly, or chemical-free because it contains PFAS, which are synthetic chemicals that pose risks to human health and the environment.

A. The Product Contains PFAS.

36. Plaintiff TFUSA facilitated direct PFAS testing on a sample of the Product and found numerous PFAS chemicals, as seen in the chart below:

PFAS Name	Amount (parts per billion ("ppb"))
6:2 FTOH-2-Perfluorohexyl ethanol	230
Perfluoropentanoic acid (PFPeA)	0.51
1H,1H,2H,2H-Perfluorooctane sulfonic acid (6:2 FTS)	0.19
Perfluorohexanoic acid (PFHxA)	4

Perfluorobutanoic acid (PFBA)	1.6
Perfluoroheptanoic acid (PFHpA)	0.028
Perfluoropropionic acid (PFPrA)	0.49
6:2 FTCA	0.077

37. PFBA is listed as a proposed hazardous constituent under the Environmental Protection Agency’s (“EPA”) Resource Conservation and Recovery Act, meaning that this chemical has been shown in scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms.²¹

38. PFHxA has been found likely to cause hepatic, developmental, hematopoietic, and endocrine effects in humans.²²

39. 6:2 FTOH-2-Perfluorohexyl ethanol is a short-chain PFAS chemical that is significantly more toxic than PFHxA.²³

40. PFPeA is linked to cancer, harms the immune system, causes hormone disruption, and disrupts fetal growth, child development, and the liver.²⁴

41. PFHpA and 6:2 FTCA have also been shown to cause health and environmental harms.²⁵

²¹ *Listing of Specific PFAS as Hazardous Constituents*, 89 Fed. Reg. 8606, 8606-21 (Feb. 8, 2024).

²² U.S. Environmental Protection Agency, *IRIS Toxicological Review of Perfluorohexanoic Acid [PFHxA, CASRN 307-24-4] and Related Salts* (Apr. 2023), https://cfpub.epa.gov/ncea/iris/iris_documents/documents/subst/0704_summary.pdf.

²³ Penelope A. Rice, et al., *Comparative Analysis of the Toxicological Databases for 6:2 Fluorotelomer Alcohol (6:2 FTOH) and Perfluorohexanoic Acid (PFHxA)*, 138 *Food and Chemical Toxicology* 111210 (Apr. 2020), <https://www.sciencedirect.com/science/article/abs/pii/S0278691520300983>.

²⁴ *Perfluoropentanoic Acid (PFPeA)*, Env’tal Working Group, <https://www.ewg.org/tapwater/contaminant.php?contamcode=E208> (last visited Aug. 15, 2024).

²⁵ See *Perfluoroheptanoic acid (PFHpA)*, Vt. Dept. of Health (Mar. 2023), <https://www.healthvermont.gov/sites/default/files/document/env-cdp-375-85-9-pfhpa.pdf>; Guohui Shi, et al., *6:2 Fluorotelomer Carboxylic Acid (6:2 FTCA) Exposure Induces Developmental Toxicity and Inhibits the Formation of Erythrocytes During Zebrafish Embryogenesis*, 190 *Aquatic Toxicology* 53-61 (Sept. 2017), <https://doi.org/10.1016/j.aquatox.2017.06.023>.

42. Additional testing also confirmed that the Product contains 949 parts per million of Total Organic Fluorine, which for certain states, is a sign of “intentionally added” PFAS in a Product.²⁶

B. PFAS Are Toxic, Unsafe, and Unsustainable Chemicals.

43. PFAS are known as “forever chemicals” because their carbon-fluorine bonds are extremely strong and are not appreciably degraded under environmental conditions. The continued use of PFAS is, by the nature of these chemicals, unsustainable and environmentally unfriendly, because it will necessarily lead to a greater concentration of PFAS in the environment.²⁷

44. The PFAS family of chemicals was accidentally discovered in 1938 by a scientist working at E.I. du Pont de Nemours and Company (“DuPont”). In the decades following that discovery, DuPont and The 3M Company (“3M”) became the primary manufacturers of PFAS.

45. For decades, DuPont, 3M, and other manufacturers were aware that PFAS persist indefinitely in the environment, bioaccumulate in blood, and pose a substantial threat to human health and the environment. Exposés have revealed what these companies knew regarding the dangers associated with these substances.²⁸

46. Despite the previous attempts to keep this information from the public, DuPont and other manufacturers have themselves now openly stated in litigation documents that the PFAS family of chemicals as a whole, not just specific types, are “hazardous substances.”²⁹

²⁶ Cal. Health & Safety Code § 109000 (a)(3)(B) (“The presence of PFAS in a product or product component [is detected] at or above 100 parts per million, as measured in total organic fluorine.”).

²⁷ Zhanyun Wang, et al., *A Never-Ending Story of Per- and Polyfluoroalkyl Substances (PFASs)?*, 51 *Env't Sci. Technol.* 2508, 2508 (Feb. 22, 2017), <https://doi.org/10.1021/acs.est.6b04806>.

²⁸ See, e.g., Sharon Lerner, *How 3M Executives Convinced a Scientist the Forever Chemicals She Found in Human Blood Were Safe*, *Pro Publica* (May 20, 2024), <https://www.propublica.org/article/3m-forever-chemicals-pfas-pfos-inside-story>.

²⁹ *N.J. Dept. of Env't. Protection v. E. I. duPont de Nemours and Co.*, 2:19-cv-14758, ECF No. 118 at 12 (D.N.J. March 30, 2021).

47. The oldest kinds of PFAS developed and used in consumer products are referred to as “long-chain” PFAS.

48. Long-chain PFAS have been “banned in the European Union and phased out by major U.S. manufacturers,” largely due to their health risks.³⁰

49. As a result of widespread concern regarding the environmental and health impacts of long-chain PFAS and greater regulation of these substances, many manufacturers have switched to using “short-chain” PFAS, also known as “GenX chemicals.”

50. The 6:2 FTOH found in the Product, *see supra* ¶¶ 36, 39, for instance, is a short-chain PFAS.³¹

51. Although short-chain PFAS were once thought to be a safer alternative to long-chain PFAS, research indicates that the human health risks of short-chain PFAS have been gravely underestimated.³² As an example of how unsafe these newer PFAS are, EPA regulations concerning GenX Chemicals in drinking water are set at a Maximum Contaminant Level of 10 parts per *trillion*.³³

52. There are a multitude of reasons why PFAS, including the specific chemicals identified in *supra* ¶ 36, are toxic, unsafe, and unsustainable.

53. For example, materials containing PFAS degrade over time, releasing the chemicals into the air, household dust, and laundry water, all of which enter the environment and potentially,

³⁰ Erika Schreder, et al., *Toxic Convenience: The hidden costs of forever chemicals in stain- and water-resistant products*, Toxic-Free Future (Jan. 2022), <https://toxicfreefuture.org/wp-content/uploads/2022/08/toxic-convenience.pdf>.

³¹ Penelope Rice et al., *supra* note 23.

³² *See, e.g.*, David Andrews, *FDA Studies: ‘Short-chain’ PFAS Chemicals More Toxic Than Previously Thought*, Env’tal Working Grp. (Mar. 9, 2020), <https://www.ewg.org/news-insights/news/fda-studies-short-chain-pfas-chemicals-more-toxic-previously-thought>.

³³ *Final PFAS National Primary Drinking Water Regulation*, *supra* note 7.

drinking water. PFAS also enter the environment when products containing them are disposed of in landfills.³⁴

54. Humans are also exposed to PFAS when they ingest household dust. The risk of such exposure is greater for infants and young children, who spend more time on the floor and tend to put things in their mouths.³⁵

55. Exposures may also occur through inhalation of PFAS in the air and through skin absorption from direct contact with PFAS materials, such as bedding.³⁶

56. Children are more vulnerable to the harmful effects of PFAS than adults.³⁷

57. On the regulatory front, the EPA currently advises the public about the health threats presented by PFAS as a whole family:

Peer-reviewed scientific studies have shown that exposure to certain levels of PFAS may lead to:

- Reproductive effects such as decreased fertility or increased high blood pressure in pregnant women.
- Developmental effects or delays in children, including low birth weight, accelerated puberty, bone variations, or behavioral changes.
- Increased risk of some cancers, including prostate, kidney, and testicular cancers.
- Reduced ability of the body's immune system to fight infections, including reduced vaccine response.
- Interference with the body's natural hormones.

³⁴ Schreder, et al., *supra* note 30, at 5-6.

³⁵ See Rice, *supra* note 23, at 2.

³⁶ Schreder, et al., *supra* note 30, at 5; see also Oddný Ragnarsdótti, et al., *Dermal Bioavailability of Perfluoroalkyl Substances Using in Vitro 3D Human Skin Equivalent Models*, 188 *Env't Int'l* 108772 (June 2024) ("Based on the data presented in this study, dermal exposure could be a significant source of exposure for some PFAS, especially the shorter-chain PFAS. Thus, the dermal route should not be dismissed as a possible route of human exposure to PFAS.").

³⁷ Alan D. Woolf, et al., *Report outlines health effects of PFAS chemicals in children, provides recommendations for testing*, AAP News (Sept. 13, 2022), <https://bit.ly/3h38Hem>.

- Increased cholesterol levels and/or risk of obesity.³⁸

58. The EPA advises that “[b]ecause children are still developing, they may be more sensitive to the harmful effects of chemicals such as PFAS.”³⁹

59. Also, because “PFAS can often be found together in mixtures, and research shows these mixtures may have combined health impacts,” the EPA has also set “a limit for any mixture of two or more of the following PFAS: PFNA, PFHxS, PFBS, and ‘GenX Chemicals.’”⁴⁰

60. Due to all of these health repercussions regarding PFAS exposure in humans, PFAS are toxic and unsafe. Due to their “forever chemical” status, PFAS are also unsustainable.

61. Because the Product contains PFAS and, therefore, contains chemicals, Saatva’s “chemical-free” representation is false.

62. Because PFAS are man-made, toxic, unsafe, and unsustainable, Saatva’s “natural,” “non-toxic,” “safe,” and eco-friendly representations are misleading.

III. Defendant’s Representations and Omissions About the Product Mislead Reasonable Consumers.

63. Saatva’s representations that its Product is “nontoxic,” “safe,” “natural,” “eco-friendly,” and “chemical-free” are false and therefore inherently misleading to D.C. consumers, who care about safe products for their families and communities. A false statement provides incorrect information, which leads these consumers to buy the Product based on the incorrect information.

³⁸ *Our Current Understanding of the Human Health and Environmental Risks of PFAS*, EPA, <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas> (last visited Aug. 15, 2024).

³⁹ *Id.*

⁴⁰ *Biden-Harris Administration Finalizes First-Ever National Drinking Water Standard to Protect 100M People from PFAS Pollution*, *supra* note 8.

64. Additionally, Saatva’s omission of the material fact that its Product contains PFAS, which pose risks to human health and the environment, is misleading to reasonable D.C. consumers who would be dissuaded from purchasing the Product had the information been disclosed.

65. Reasonable D.C. consumers encountering Saatva’s representations emphasizing that the Product is “nontoxic,” “safe,” “natural,” “eco-friendly,” and “chemical-free” would not expect the Product to contain unsafe, unnatural, environmentally unfriendly, and unsustainable chemicals.

66. Consumers, for example, believe “natural” means that a product is “healthy, safe, and better for the environment.”⁴¹ PFAS, however, are synthetic and unnatural, and cause health and environmental harms. Saatva’s representations that the Product is safe, natural, and eco-friendly are misleading.

67. Saatva’s claim that its Product is safe is misleading because reasonable consumers consider PFAS to be unsafe for humans.

68. Saatva’s claim that its Product is eco-friendly is misleading because reasonable consumers consider PFAS to be harmful to the environment.

69. Saatva’s claims that its Product is natural, chemical-free, and non-toxic are misleading because reasonable consumers consider PFAS to be synthetic chemicals that are unnatural and harmful to human health and the environment.

70. Regarding environmental claims, the Federal Trade Commission (“FTC”) has released “Green Guides” that “caution marketers not to make unqualified general environmental

⁴¹ Lu Ann Williams, *Consumers Associate Natural, Organic with Clean Label*, Prepared Foods (June 14, 2022), <https://www.preparedfoods.com/articles/127006-consumers-associate-natural-organic-with-clean-label>.

benefit claims because ‘it is highly unlikely that marketers can substantiate all reasonable interpretations of these claims.’”⁴²

71. D.C. consumers cannot discover the true nature of the Products from reading Saatva’s websites or marketing materials. Ordinary consumers do not have the ability to test mattresses for PFAS.

72. Reasonable D.C. consumers therefore must, and do, rely on the Product labeling and websites to share important information about the Product.

73. Nothing about the packaging or the websites would alert a reasonable D.C. consumer to the PFAS within the Product.

74. In withholding the PFAS information, and adding false representations about the Product, Saatva deceptively and misleadingly encouraged D.C. consumers to purchase the Product.

75. Saatva knows what representations it makes in marketing the Product. Saatva also knows how the Product is sourced and produced. Saatva thus knows, knew, or should have known, the facts demonstrating that the Product is falsely represented to D.C. consumers.

76. Saatva is aware of the consumer market trend towards safer Products. In making the false, misleading, and deceptive representations and omissions at issue, Saatva knew and intended that consumers would choose to buy, and would pay more for, products represented to be “nontoxic,” “safe,” “natural,” “eco-friendly,” and “chemical-free,” furthering Saatva’s private interest of increasing sales of the Product and decreasing the sales of its competitors’ mattress products that are truthfully marketed.

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

⁴² 16 C.F.R. § 260.4(b) (2012). Relatedly, the CPPA states that “when construing the term ‘unfair or deceptive trade practice,’” deference should be given to “interpretation by the [FTC].” *See* D.C. Code § 28-3901(d).

IV. Saatva's Representations Are Material to D.C. Consumers.

78. Saatva's representations and omissions are material in that a reasonable person would attach importance to such information—the presence of PFAS in the Product, which are unsafe to humans and the environment—and would be induced to act upon such information in making purchasing decisions.

79. Consumers care about whether the products they purchase contain unsafe and environmentally unfriendly chemicals.

80. One study found that “93% of voters agree and 62% strongly agree that companies should do a better job of removing harmful chemicals from consumer products.”⁴³

81. A 2023 Consumer Reports survey of 2,088 consumers revealed that one of the three most important features for shoppers when buying a mattress is whether it “comes with a label stating that its materials are not harmful to humans.”⁴⁴

82. Another survey found that 81 percent of people polled expect companies to be environmentally conscious in their advertising and communications, and 69 percent of respondents said they were doing everything possible to minimize their carbon footprint.⁴⁵

83. Also, “68% [of Americans] would pay more for sustainable products.”⁴⁶

⁴³ *Public Opinion on Chemicals*, UCSF Program on Reproductive Health and the Environment, <https://prhe.ucsf.edu/public-opinion-chemicals> (last visited Aug. 15, 2024).

⁴⁴ Consumer Reports Survey Research Dept., *American Experiences Survey: A Nationally Representative Multi-Mode Survey January 2023 Omnibus Results* (Jan. 2023), https://article.images.consumerreports.org/image/upload/v1674838693/prod/content/dam/surveys/Consumer_Report_s_AES_January_2023.pdf.

⁴⁵ *New Getty Images research shows that climate and sustainability still top concern despite the COVID-19 pandemic*, PR Newswire (Oct. 7, 2020), <https://www.prnewswire.com/news-releases/new-getty-images-research-shows-that-climate-and-sustainability-still-top-concern-despite-the-covid-19-pandemic-301147426.html>.

⁴⁶ *Interest in Sustainability Surges for Consumer Products*, Computer Generated Solutions Inc., <https://www.cgsinc.com/en/resources/interest-sustainability-surges-consumer-products> (last visited Aug. 15, 2024).

84. Even more specifically, “[t]wo-thirds of consumers say they would pay more for a *mattress* manufactured using environmentally sustainable practices or materials.”⁴⁷

85. Further, “70% [of consumers] expect natural products companies to be transparent about sourcing and ingredients.”⁴⁸

86. Finally, a survey by the nonprofit group Toxic-Free Future revealed that 84% of consumers are much more likely to shop from retailers that have taken steps to eliminate toxins from products they sell, and that 93% of the 1,600 consumers surveyed are more likely to buy a product if it has an independent third-party seal of approval.⁴⁹

87. Ultimately, parents rely on information from manufacturers to identify products that are safe for their children and pose little or no adverse impact on the environment.

88. Purchasing the right crib mattress is important, given that infants sleep from 14 to 19 hours per day.⁵⁰

JURISDICTION AND VENUE

89. This Court has personal jurisdiction over the Parties in this case. Plaintiffs consent to this Court having personal jurisdiction over them.

⁴⁷ David Perry, *Survey: Many Consumers Would Pay More for Sustainable Mattress*, BedTimes (Nov. 15, 2022), <https://bedtimesmagazine.com/2022/11/survey-many-consumers-would-pay-more-for-sustainable-mattress/> (emphasis added).

⁴⁸ Victoria A.F. Camron, *Survey: Consumers expect more from natural products brands*, New Hope Network (Oct. 20, 2021), <https://www.newhope.com/market-data-and-analysis/survey-consumers-expect-more-natural-products-brands>.

⁴⁹ *Survey Results: Shoppers voting for safe and healthy products with their wallets*, Toxic-Free Future (July 10, 2017), <https://toxicfreefuture.org/blog/survey-results-shoppers-voting-for-safe-and-healthy-products-with-their-wallets/>.

⁵⁰ Elena Ben-Joseph, *Sleep and Your Newborn*, Nemours KidsHealth, <https://kidshealth.org/en/parents/sleepnewborn.html> (last visited Aug. 15, 2024) (indicating range of hours of sleep for newborns).

90. This Court has personal jurisdiction over Defendant Saatva because Saatva has purposefully directed its conduct to the District and availed itself to the benefits and protections of District of Columbia law.

91. Saatva markets to consumers within the District. The Product can be, and is, purchased in the District by D.C. consumers, who have access to Saatva's marketing representations about the Product.

92. The beneficiaries of this action are District of Columbia consumers, and this case concerns representations made in the District of Columbia, to residents of the District of Columbia, and with the intent that residents would act upon those representations and purchase products within the District of Columbia.

93. The District has a strong interest in protecting its consumers through enforcement of the CPPA. The general public of the District has a corresponding interest in the vigorous enforcement of laws established to protect District consumers.

94. Toxin Free USA and Beyond Pesticides, which have agreed to represent the interest of those consumers, have an interest in vindicating rights conferred by the CPPA as related to misrepresentations made to D.C. consumers. Plaintiffs have an interest in prosecuting this case within the District, which is where the alleged injuries occurred and where the relevant Products were advertised for purchase and/or purchased.

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

PARTIES

96. Plaintiff Toxin Free USA, also known as GMO Free USA, is a 501(c)(3) non-profit organization whose mission is to harness independent science and agroecology concepts to

advocate for clean and healthy food and ecological systems. Toxin Free USA educates consumers about the potential hazards of synthetic ingredients, pesticides and biocides, and genetically engineered organisms (“GMOs”).

97. In 2020, GMO Free USA expanded its public education mission beyond GMOs and GMO-related pesticides, establishing Toxin Free USA as a complementary arm to the existing organization on the basis that it is impossible to have clean food and a clean environment without addressing the many toxins and pesticides, such as PFAS chemicals, that have become pervasive in our food system and environment.

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

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

100. On November 17, 2023, TFUSA purchased Saatva’s “Crib Mattress” through Saatva’s website.

101. Testing commissioned by TFUSA through a third-party lab revealed the presence of PFAS chemicals in the Saatva Product, as detailed *supra*, including compounds that are consistent with PFAS textile treatments, 6:2 FTOH and PFHxA.⁵¹

102. Plaintiff BP is a 501(c)(3) nonprofit, public interest organization whose mission is to protect the environment, protect organic integrity, and educate consumers and businesses about the harms that humans have on the environment.

⁵¹ Maya Gilchrist, *PFAS in the textile and leather industries*, Minnesota Pollution Control Agency (May 2023), <https://www.pca.state.mn.us/sites/default/files/gp3-06.pdf>.

103. BP is based in the District of Columbia and performs its work throughout the United States, including in the District of Columbia.

104. BP has an interest in truth in advertising regarding environmental concerns. The organization diligently works to promote ecological systems that are clean, accessible, and free of contamination. BP has also worked to address these concerns in the consumer products space.

105. BP educates the public so consumers can make informed choices when they shop. BP's website, publications, public education, research, network building, and mobilization activities provide an important service to consumers and community activists.

106. Defendant Saatva is incorporated and headquartered in Westport, Connecticut.

107. Defendant markets and sells the Product in stores and online in the District of Columbia.

108. Through its misrepresentations, Defendant has caused harm to the general public of the District of Columbia.

CAUSE OF ACTION

Violations of the District of Columbia Consumer Protection Procedures Act

109. Plaintiffs incorporate by reference all the allegations of the preceding paragraphs of this Complaint.

110. Plaintiffs are nonprofit, public interest organizations that bring these claims on behalf of the general public of D.C. consumers. *See* D.C. Code § 28-3905(k)(1)(D).

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

112. Additionally, pursuant to section 28-3905(k)(1)(C), the CPPA explicitly allows a nonprofit organization acting on behalf of the general public to establish “tester” standing, which Plaintiff Toxin Free USA has established here.

113. Defendant Saatva is a “person” and a merchant that provides “goods” within the meaning of the CPPA. *See* D.C. Code § 28-3901(a)(1), (3), (7).

114. As alleged in this Complaint, Defendant Saatva has falsely and deceptively represented, through false statements, material omissions, and ambiguous language, that the Product is “nontoxic,” “safe,” “natural,” “eco-friendly” and “chemical-free,” when, in reality, the Product contains PFAS, which are synthetic chemicals that are harmful to human health and the environment.

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

JURY TRIAL DEMAND

116. Plaintiffs hereby demands a trial by jury.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for judgment against Defendant Saatva and request the following relief:

- A. A declaration that Saatva’s conduct is in violation of the CPPA;
- B. An order enjoining Saatva’s conduct found to be in violation of the CPPA; and

C. An order granting Plaintiffs costs and disbursements, including reasonable attorneys' fees and expert fees, and prejudgment interest at the maximum rate allowable by law.

DATED: August 16, 2024

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