

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

<p>ORGANIC CONSUMERS ASSOCIATION, 6771 South Silver Hill Drive, Finland, MN 55603,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>BEN & JERRY'S HOMEMADE, INC., 30 Community Dr, South Burlington, VT 05403 and CONOPCO INC. d/b/a UNILEVER UNITED STATES, 800 Sylvan Avenue Englewood Cliffs, NJ 07632,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. _____</p> <p><u>COMPLAINT</u></p> <p><u>DEMAND FOR JURY TRIAL</u></p>
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COMPLAINT

On behalf of its members and the general public, Plaintiff the Organic Consumers Association (“OCA” or “Plaintiff”), by and through its counsel, brings this action against Defendants Ben & Jerry’s Homemade, Inc. and Conopco, Inc. d/b/a Unilever United States (collectively, “Unilever” or “Defendants”) regarding the deceptive labeling, marketing, and sale of Unilever’s Ben & Jerry’s Ice Cream Products (the “Products,” as further defined below) as humanely sourced and environmentally responsible, despite the fact that ingredients are sourced from inhumane dairy farms and some of the Products contain traces of an environmentally harmful biocide. OCA alleges the following based upon information, belief, and the investigation of its counsel:

INTRODUCTION

1. Due to concerns about health, sustainability, and animal welfare, consumers are increasingly considering how their food is produced and the effects of that production on animals and the environment.

2. As a result, consumers seek out products that are produced with farming and grazing practices that lead to humanely-raised animals, clean water, healthy soil, and a toxin-free environment, such as practices associated with “regenerative agriculture.”¹

3. Thus, demand has increased for these products that provide assurances regarding animal welfare and also for “green” products—that is, products that are farmed and processed using environmentally responsible practices. Consumers, as Unilever knows, are willing to pay more for products marketed in this way than they are willing to pay for competing products that do not provide assurances about animal welfare or environmental responsibility.

4. Unilever, through its wholly owned subsidiary Ben & Jerry’s Homemade, Inc., produces a variety of ice cream products (the “Products”).²

5. Unilever markets these Products as being made from milk produced by “happy cows” raised in “Caring Dairies,” leading consumers to believe that the Products are produced using animal-raising practices that are more humane than those used on regular factory-style, mass-production dairy operations.³

6. In contrast to Unilever’s representations, the Products include milk that comes from cows raised in regular factory-style, mass-production dairy operations, also known as “Concentrated Animal Feeding Operations” or “Large Farm Operations”—not in the special

¹ See, e.g., Regenerative International, “About Page,” <http://www.regenerationinternational.org/about-us/> (last visited July 9, 2018).

² Unilever may discontinue offering some Products and regularly introduce new products. The Plaintiff reserves the right to add or remove products to the definition of “Products” as they become known.

³ In this Complaint, Unilever’s representations about animal welfare are referred to as the “Caring Dairy Representations,” as further defined below.

“Caring Dairies” emphasized in Unilever’s marketing.

7. Concentrated Animal Feeding Operations employing regular factory-style, mass-production dairy operations have negative implications for both animal-husbandry and the environment.

8. Additionally, Unilever markets the Products with a variety of representations intended to portray the Products as being produced in an environmentally responsible manner. According to Unilever, the Products “respect the Earth and the Environment,” are made with “values-led sourcing,” and are part of “Ben & Jerry’s [...] long history of fighting for climate justice and finding ways to reduce the environmental impact of our business.”⁴

9. In contrast to Unilever’s representations about climate justice and reducing environmental impact, some of the Products contain glyphosate, a synthetic biocide suspected, including by consumers, to have detrimental environmental effects.

10. The following subset of the Products also contain glyphosate or its byproducts (the “Glyphosate Products”):⁵

- (a) Peanut Butter Cup;
- (b) Peanut Butter Cookie;
- (c) Vanilla;
- (d) Phish Food;

⁴ In this Complaint, Unilever’s representations about environmental impact and responsibility are referred to as the “Environmental Representations,” as further defined below.

⁵ Samples of these varieties tested positive for glyphosate or a byproduct of glyphosate. Further testing or discovery may reveal additional varieties also contain glyphosate. The Plaintiff reserves the right to add or remove products to the definition of the “Glyphosate Products” as they become known.

- (e) The Tonight Dough;
- (f) Half Baked;
- (g) Chocolate Fudge Brownie;
- (h) Americone Dream; and
- (i) Chocolate Chip Cookie Dough.

11. In sum, Unilever is building on Ben & Jerry's reputation as an environmentally responsible company to deceive consumers into believing that the Products are made with humane and environmentally responsible practices.

12. No reasonable consumer who sees Unilever's Caring Dairy Representations that reference "happy cows" and "Caring Dairy" practices would expect the Products to be made with dairy produced on regular factory-style, mass-production dairy operations.

13. Likewise, no reasonable consumer who sees Unilever's Environmental Representations reflecting the company's supposed "respect for the Earth and the Environment" would expect the Glyphosate Products to contain traces of a biocide considered by consumers to be environmentally harmful.

14. By deceiving consumers about the nature, quality, and/or ingredients of the Products, Unilever is able to sell a greater volume of the Products, to charge higher prices for the Products, and to take away market share from competing products, thereby increasing its own sales and profits.

15. Unilever's false and misleading representations and omissions violate the District of Columbia Consumer Protection Procedures Act ("DC CPPA"), D.C. Code §§ 28-3901, et seq.

16. Because Unilever's labeling and advertising of the Products tend to mislead and are materially deceptive about the true nature, quality, and ingredients of the Products, OCA brings

this deceptive advertising case on behalf of its members and the general public, and seeks relief including an injunction to halt Unilever's false marketing and sale of the Products.

FACTUAL ALLEGATIONS

17. OCA brings this suit for injunctive relief under the DC CPPA against Unilever, based on misrepresentations and omissions committed by Unilever regarding the Products, which Unilever markets as made with humane and environmentally responsible practices.

18. Unilever's marketing of the Products is false and deceptive because (1) the Products are made with milk produced in regular factory-style, mass-production dairy operations, and (2) the Glyphosate Products contain the biocide glyphosate, the use of which does not comport with consumers' perceptions of the Environmental Representations.

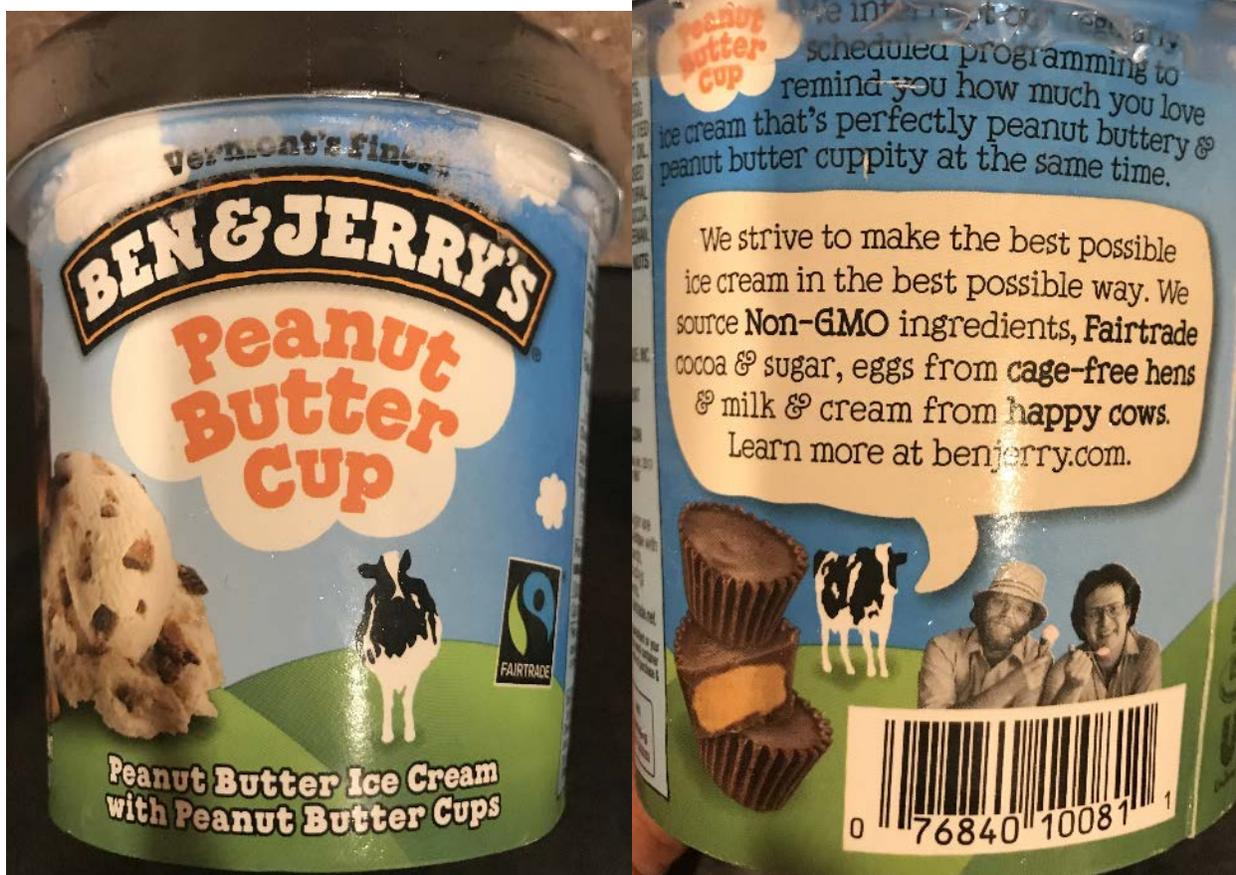
19. Unilever knows that American consumers increasingly and consciously seek out, and will pay more for, humanely farmed and environmentally responsible products.

20. Accordingly, Unilever cultivates an image of the Products as being produced with humane and environmentally responsible practices.

The Reality of the Milk Sourced for the Products Renders Unilever's Advertising False and Deceptive.

21. Unilever represents that the Products are made with dairy produced by cows kept on farms that meet the requirements of the "Caring Dairy" program, which Unilever outlines on the website it maintains for Ben & Jerry's and advertises on the Product packaging.

22. The packaging of the Products presents the Products as made with milk produced by "Happy Cows," prominently featuring, among other representations, green fields, blue skies, and cartoon depictions of happy animals.



23. On the website, Unilever calls the “Caring Dairy” program “a unique program that’s helping farmers move toward more sustainable practices on the farm.”⁶

24. The Caring Dairy Representations are designed to comport with Unilever’s promises of “values-led sourcing” for the Products and “finding ways to reduce the environmental impact of our business.”⁷

⁶ Ben & Jerry’s Website, “How We Do Business,” <https://www.benjerry.com/values/how-we-do-business#ingredients> (last visited July 9, 2018).

⁷ Ben & Jerry’s Website, “If It’s Melted It’s Ruined,” <https://www.benjerry.com/values/issues-we-care-about/climate-justice> (last visited July 9, 2018).

25. On the website, Unilever states that the “Caring Dairy” program is “required for all farmers.”⁸



Basic standards for being a Caring Dairy farmer (required for all farmers)

The basic standards are specific to Cow Care, Planet Stewardship, and the Farmer & Farm Worker. In order to be a Caring Dairy farmer, all these standards must be met. All farms will undergo a third party verification by Where Food Comes From, to evaluate how each farm is meeting the required Standards. For a farm to be considered a Caring Dairy farm, they must meet the Basic Standards for participation. From there, farms can strive for Silver or Gold level recognition and received a larger compensation for their achievement.

26. According to Unilever, it only wants to use “the best dairy for our ice cream”⁹ and the “Caring Dairy” program “respects the farmer and their farmworkers, the planet and the cow,”¹⁰ and produces “Happy Cows.”

⁸ Ben & Jerry’s Website, “Caring Dairy Standards,” <https://www.benjerry.com/whats-new/2016/caring-dairy-standards> (last visited July 9, 2018).

⁹ Ben & Jerry’s Website, “Caring Dairy,” <https://www.benjerry.com/caringdairy> (last visited July 9, 2018).

¹⁰ *Id.*

27. Unilever describes the “Caring Dairy” program as follows:

Caring Dairy provides our farmers a program for evaluating, implementing and continuously improving sustainable agricultural practices on their farms. Our belief is that the future of dairy farming is to build soil health that includes increased cover crops, alternative tilling practices, rotational crops and grazing techniques. We also believe that high quality animal care is fundamental to the success of a farm, a well-cared for cow will produce a higher quality milk. And of course the importance of labor that supports the entire farm, from the farmer to the farmworker.¹¹

28. According to Unilever, farms can join the “Caring Dairy” program by becoming verified by a third-party organization that verifies that the farm meets certain standards. These standards are split into three categories that reflect the values Unilever claims to believe in: Cow Care, Planet Stewardship, and Farmer & Farm Worker.¹²

29. Once a farm is verified as meeting the basic “Caring Dairy” standards, the farm can also be verified as a “Silver Tier” or “Gold Tier” farm by meeting additional standards beyond the basic requirements. Roughly half of the “Caring Dairy” farms are either Silver Tier or Gold Tier verified farms.¹³

30. Taken together, Unilever’s representations about the “Caring Dairy” program (the “Caring Dairy Representations”) are intended to, and do, portray to consumers an image of animal husbandry that is more humane than regular factory-style, mass-production dairy operations.

31. Contrary to the image created by Unilever’s Caring Dairy Representations, the milk used in the Products is produced in many different Vermont dairy facilities, only some of which

¹¹ *Id.*

¹² Ben & Jerry’s Website, “Caring Dairy Standards,” <https://www.benjerry.com/whats-new/2016/caring-dairy-standards> (last visited July 9, 2018).

¹³ *Id.*

are “Caring Dairy” verified, and many of the non-“Caring Dairy” farms are, in fact, regular factory-style, mass-production dairy operations.

32. The milk used in the Products is sourced through the St. Albans Cooperative Creamery, Inc. (“St. Albans”), a dairy cooperative based in St. Albans City, Vermont that has more than 360 members.

33. As of January 2017, fewer than 90 of St. Albans’ 360 members—less than 25%—were verified “Caring Dairy” farms.

34. St. Albans is responsible for processing the raw milk produced on both the “Caring Dairy” farms and St. Albans’ non-“Caring Dairy” industrial facilities, by separating it into heavy cream and condensed skim milk. St. Albans delivers the separated heavy cream and condensed skim milk to Unilever.¹⁴

35. On information and belief, St. Albans does not distinguish or keep separate milk produced from “Caring Dairy” farms and St. Albans’ other facilities, which include regular factory-style, mass-production dairy operations.

36. Because St. Albans does not keep “Caring Dairy” dairy separate from dairy produced on non-“Caring Dairy” industrial farms, not all of the milk used in the Products is from verified “Caring Dairy” farms.

37. Regular factory-style, mass-production dairy operations in Vermont (1) employ cow confinement and extensive antibiotic use, which does not comport with the Caring Dairy Representations or meet consumer perception of “happy cows,” and (2) use non-grazing dairy

¹⁴ Ben & Jerry’s Website, “How We Make Ice Cream,” <https://www.benjerry.com/flavors/how-we-make-ice-cream> (last visited July 9, 2018).

practices, which result in a runoff that pollutes bodies of water, which does not meet consumer perception of “values-led sourcing,” “finding ways to reduce the environmental impact of our business,”¹⁵ or the Environmental Representations.

38. In 2017, a St. Albans member was fined for illegally discharging untreated agricultural waste into a brook that feeds into Lake Champlain.¹⁶

39. In 2015, the same St. Albans member was issued an FDA warning letter because it “offered for sale a [dairy cow] for slaughter as food that was adulterated” with “a new animal drug that is unsafe under section 512 of the FD&C Act, 21 U.S.C. 360b,” and an investigation found that this member held “animals under conditions that are so inadequate that medicated animals bearing potentially harmful drug residues are likely to enter the food supply.”¹⁷

40. In 2018, the same St. Albans member built an expansion in one of Vermont’s most polluted watersheds without the proper permits or inspection, leading the farm to be one of Vermont’s largest dairy operation plants.¹⁸

¹⁵ Cindy Ellen Hill, *Cows, Corn and Cash: Lake Champlain Water Quality Studies Net Frustration*, VTDigger.org (May 6, 2012), <https://vtdigger.org/2012/05/06/cows-corn-and-cash-lake-champlain-water-quality-studies-net-frustration/> (last visited July 9, 2018).

¹⁶ Office of the Attorney General of Vermont, *Attorney General TJ Donovan Settles Water Quality Claims with Berkshire Farm* (Dec. 20, 2017), <http://ago.vermont.gov/blog/2017/12/20/attorney-general-tj-donovan-settles-water-quality-claims-berkshire-farm/> (last visited July 9, 2018).

¹⁷ FDA, *Warning Letter to Pleasant Valley Farms of Berkshire, LLC* (Aug. 21, 2015), <https://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2015/ucm459569.htm>.

¹⁸ Mike Polhamus, *A Dairy Expands Near Polluted Lakes Putting Regulators to the Test*, VTDigger.org (Mar. 13, 2018), <https://vtdigger.org/2018/03/13/a-dairy-expands-near-polluted-lakes-putting-regulators-to-the-test/> (last visited July 9, 2018).

41. The green fields and grazing of “happy” cows shown on the Products misrepresent the kind of industrial dairy practices employed at the St. Albans members that supply ingredients found in the Products.

42. The promises of “values-led sourcing,” “finding ways to reduce the environmental impact of our business,” and the Environmental Representations misrepresent the kind of industrial dairy practices employed at the St. Albans members that supply ingredients found in the Products.

43. Unilever’s failure to disclose that only some of the milk in the Products comes from “Caring Dairy” verified farms, constitutes material omissions.

The Presence of Glyphosate and Its Byproducts in the Glyphosate Products Renders Unilever’s Advertising False and Deceptive.

44. Unilever also markets the Products, including the Glyphosate Products, with a multitude of representations designed to evoke an image of the Products and Ben & Jerry’s brand as environmentally responsible.

45. For instance, the website that Unilever maintains for Ben & Jerry’s represents the Products as “promoting business practices that respect the Earth and the Environment.”¹⁹

¹⁹ Ben & Jerry’s Website, “2015 Social and Environmental Assessment Report,” <https://www.benjerry.com/about-us/sear-reports/2015-sear-report> (last visited July 9, 2018); Unilever Website, “Commitment to Quality,” <https://www.unileverusa.com/brands/food-and-drink/ben-and-jerrys.html> (last visited July 9, 2018).



Our Product Mission drives us to make fantastic ice cream – for its own sake.

To make, distribute and sell the finest quality ice cream and euphoric concoctions with a continued commitment to incorporating wholesome, natural ingredients and promoting business practices that respect the Earth and the Environment.

46. Unilever also claims that the Ben & Jerry’s business model operates in a specific fashion to protect the environment: “Ben & Jerry’s has a long history of fighting for climate justice and finding ways to reduce the environmental impact of our business,”²⁰ and further represents that the brand “pursue[s] sustainable solutions” to issues in the dairy industry, and has “high standards for environmental practices” and maintains “sustainable farming practices.”²¹

²⁰ Ben & Jerry’s Website, “If It’s Melted It’s Ruined,” <https://www.benjerry.com/values/issues-we-care-about/climate-justice> (last visited July 9, 2018).

²¹ Ben & Jerry’s Website, “Dairy Statement: January 2017,” (Jan. 2017), <http://www.benjerry.com/values/how-we-do-business/caring-dairy/dairy-statement-january-2017> (last visited July 9, 2018).

47. Unilever holds the Ben & Jerry's brand out as valuing transparency and truth-in-advertising when it comes to its Products, stating that consumers have “the right to know what’s in their food,” and supporting mandatory labeling requirements to protect “transparency” in the food supply.²²



Support GMO Labeling

Ben & Jerry's is proud to stand with the growing consumer movement for transparency and the right to know what's in our food supply by supporting mandatory GMO labeling legislation.

[Learn More >](#)

²² Ben & Jerry's Website, “Issues We Care About,” <https://www.benjerry.com/values/issues-we-care-about> (last visited July 9, 2018).

48. Unilever’s website further represents that the ingredients for the Products are chosen based on a “Values-Led Sourcing” process.²³



49. Unilever explains that its “Values-Led” sourcing practices are meant to support positive change.²⁴

50. Taken together, these representations (the “Environmental Representations”) are intended to, and do, portray to consumers an image of the Products as being produced with environmentally responsible practices.

51. Quantitative testing has revealed that the Glyphosate Products contain glyphosate, which is a synthetic biocide that has raised widespread concerns among consumers regarding its environmental effects.

52. Tests conducted by an independent laboratory using liquid chromatography mass spectrometry (LCMC) revealed the presence of glyphosate and of aminomethylphosphonic acid (AMPA), the main byproduct of glyphosate, resulting in effective glyphosate levels between 0.05

²³ See, e.g., Ben & Jerry’s Website, “Caramel Chocolate Cheesecake Ice Cream,” <https://www.benjerry.com/flavors/caramel-chocolate-cheesecake-ice-cream> (last visited July 9, 2018).

²⁴ Ben & Jerry’s Website, “How We Do Business,” <https://www.benjerry.com/values/how-we-do-business> (last visited July 9, 2018).

and 1.74 parts per billion (“ppb”). The effective glyphosate levels found in the Glyphosate Products are shown in the chart below:

Ben & Jerry’s Product	Effective Glyphosate Level Detected (ppb)
Peanut Butter Cup	0.57
Peanut Butter Cookie	0.91
Vanilla (two samples tested)	0.05 to 0.25
Phish Food	0.42
The Tonight Dough	0.42
Half Baked	0.05 to 0.25
Chocolate Fudge Brownie	1.74
Americone Dream	0.05 to 0.25
Chocolate Chip Cookie Dough	0.05 to 0.25

53. Glyphosate is, by volume, the world’s most widely produced herbicide. Glyphosate was invented by the agrochemical and agricultural biotechnology corporation Monsanto, which began marketing the herbicide in 1974 under the trade name Roundup, after DDT was banned.²⁵

54. By the late 1990s, use of Roundup had surged as a result of Monsanto’s strategy of genetically engineering seeds to grow food crops that could tolerate high doses of the herbicide. The introduction of these genetically engineered seeds enabled farmers more easily to control weeds on their crops.²⁶ Today, glyphosate is routinely sprayed directly on a host of non-genetically

²⁵ See Shannon Van Hoesen, “Study: Monsanto’s Glyphosate Most Heavily Used Weed-Killer in History,” Environmental Working Group (Feb. 2, 2016), <https://www.ewg.org/release/study-monsanto-s-glyphosate-most-heavily-used-weed-killer-history> (last visited July 9, 2018).

²⁶ See *id.*

modified crops.²⁷

55. Between 1996 and 2011, herbicide use in the United States increased by 527 million pounds, despite Monsanto's claims that genetically modified crops would reduce pesticide and herbicide use.²⁸ Between 2014-2016, the amount of glyphosate used in Vermont on corn alone more than tripled.²⁹

56. The frequent use of glyphosate has led to the formation of glyphosate-resistant "superweeds."³⁰ The proliferation of these superweeds requires farmers to use more glyphosate at levels that can harm the ecosystem or to use other herbicides that are known to be harmful to the environment.³¹

57. Over the past several years, consumers have become increasingly conscious of the

²⁷ *See id.*

²⁸ *See id.*

²⁹ Commentary, *Michael Colby: GMO Corn to Blame for Soaring Pesticide Use*, VTDigger.org (Mar. 13, 2018), <https://vtdigger.org/2018/02/04/michael-colby-gmo-corn-blame-soaring-pesticide-use/> (last visited July 9, 2018).

³⁰ Jordan Wilkerson, *Why Roundup Ready Crops Have Lost Their Allure*, Harvard University Graduate School of Arts and Sciences Science in the News Blog (Aug. 10, 2015), <http://sitn.hms.harvard.edu/flash/2015/roundup-ready-crops/> ("We do not have to go into detail about probabilities to assess whether superweeds will form – we already have confirmation that they have. Twenty-four cases of glyphosate-resistant weeds have been reported around the world, 14 of which are in the United States.").

³¹ *Id.* ("This increased use of glyphosate heightens the likelihood of higher concentrations of the chemical running off into nearby ecosystems. At these elevated concentrations, glyphosate may be capable of causing environmental damage."); William Neuman and Andrew Pollack, *Farmers Cope With Roundup-Resistant Weeds*, N.Y. Times, B1, New York Edition (May 4, 2010), <http://www.nytimes.com/2010/05/04/business/energy-environment/04weed.html> ("American farmers' near-ubiquitous use of the weedkiller Roundup has led to the rapid growth of tenacious new superweeds. To fight them, Mr. Anderson and farmers throughout the East, Midwest and South are being forced to spray fields with more toxic herbicides")

detrimental effects that glyphosate, and its increasing use, may have on the environment.

58. Reasonable consumers do not expect a chemical with such widely suspected environmental and health concerns to be found in a product marketed as environmentally responsible, which makes Unilever's Environmental Representations regarding the Glyphosate Products false and deceptive.

59. Nowhere on the Ben & Jerry's website or on the Glyphosate Products' packaging does Unilever mention that glyphosate may be in the Glyphosate Products, a material omission in the marketing of the Glyphosate Products.

Unilever Has Deceived Consumers and Is Aware That Its Representations Were False.

60. Unilever holds itself out to the public as a trusted expert in the production of ice cream.

61. Unilever knows what representations it makes regarding the Products.

62. Unilever also knows how its ice cream is produced, including the source of the milk used in the Products, and that glyphosate enters the Glyphosate Products sometime during the production process.

63. The source of the dairy in the Products and glyphosate in the Glyphosate Products is known to Unilever and its suppliers.

64. Consumers frequently rely on manufacturers, their reputation, and the information provided on manufacturers' websites in making purchase decisions, especially in purchasing food.

65. The Ben & Jerry's brand has a long-standing reputation, now cultivated by Unilever, of being an environmentally and socially conscious brand, with its founders crediting

the brand's success to its socially conscious practices.³²

66. Reasonable consumers lack the information and scientific knowledge necessary to ascertain the true source, quality, and nature of ingredients in the Products.

67. Reasonable consumers must, and do, rely on Unilever to honestly report what the Products contain and how they are made.

68. Reasonable consumers are misled and deceived by Unilever's Caring Dairy Representations into believing that they are purchasing products produced using more humane animal-husbandry practices than they actually are.

69. Reasonable consumers are misled and deceived by Unilever's Caring Dairy Representations and Environmental Representations into believing that they are purchasing products produced using methods that benefit, or do not harm, the environment.

70. Reasonable consumers are misled and deceived by Unilever's Environmental Representations into believing that they are purchasing products produced using methods that benefit, or do not harm, the environment.

71. Although reliance is not an element of claims under the DC CPPA, Unilever made the false, misleading, and deceptive representations and omissions knowing that consumers would rely upon these representations and omissions in purchasing the Products.

72. In making the false, misleading, and deceptive representations and omissions at issue, Unilever knew and intended for consumers to purchase the Products and Glyphosate Products when consumers might otherwise purchase a competing product.

³² Claire Rafford, *Ben & Jerry's founder reflects on company, socially conscious business mission*, The Observer (Mar. 21, 2018), <https://ndsmcobserver.com/2018/03/ben-jerrys-founder-reflects/>.

73. In making the false, misleading, and deceptive representations and omissions at issue, Unilever also knew and intended that consumers would pay more for products that were represented as humane and/or environmentally responsible, furthering Unilever's private interest of increasing sales of its products and decreasing the sales of the humane, environmentally friendly, and/or glyphosate-free products that are truthfully marketed by its competitors.

74. Upon information and belief, Unilever has profited enormously, including from consumers in the District of Columbia, from its falsely marketed products and its carefully orchestrated image for the Ben & Jerry's brand.

75. Unilever's conduct in representing the Products as being made with humane and environmentally responsible practices deceived and/or is likely to deceive the public.

76. Consumers cannot discover the true nature of the Products from reading the label or visiting Unilever's websites that market the Products. Neither the Product labels nor Unilever's website state that ingredients used in the Products comes from non-"Caring Dairies," and no mention is made of the presence of glyphosate in the Glyphosate Products.

77. Discovery of the true nature of the ingredients requires knowledge of industrial dairy production and chemistry and access to laboratory testing that is not available to the average reasonable consumer.

78. The production process Unilever uses for the Glyphosate Products, including what would account for the presence of glyphosate, is known to Unilever and its suppliers but has not been disclosed to OCA or to consumers in the District of Columbia.

79. To this day, Unilever continues to conceal and suppress the true nature, identity, source, and method of production of the Products.

80. Unilever's concealment tolls the applicable statute of limitations.

81. Upon information and belief, Unilever has failed to remedy the problems with the Products and its marketing, thus causing future harm to consumers, as well as real, immediate, and continuing harm.

82. Unilever has failed to provide adequate relief to members of the District of Columbia consuming public as of the date of filing this Complaint.

83. OCA contends that the Products were sold pursuant to deceptive, unfair, and unlawful trade practices because the sale of the Products offends public policy and is immoral, unethical, oppressive, unscrupulous, and caused substantial economic injuries to consumers.

84. OCA seeks declaratory relief in the form of an order declaring Unilever's conduct to be unlawful and injunctive relief putting an end to Unilever's deceptive and unfair business practices, including clear and full disclosure of the sources of the ingredients in the Products and the presence of glyphosate in the Glyphosate Products as well as corrective advertising and/or a reformulation of the Products so that the Products contain dairy solely from "Caring Dairy" farms and the Glyphosate Products no longer contain glyphosate.

JURISDICTION AND VENUE

85. This Court has personal jurisdiction over the parties in this case. Plaintiff OCA, by filing this Complaint, consents to this Court having personal jurisdiction over it.

86. OCA maintains a presence in the District of Columbia.

87. This Court has personal jurisdiction over Unilever pursuant to D.C. Code § 13-423. Unilever has sufficient minimum contacts with the District of Columbia to establish personal jurisdiction of this Court over it because, *inter alia*, Unilever is engaged in deceptive schemes and acts directed at persons residing in, located in, or doing business in the District of Columbia, or otherwise purposefully avails itself of the laws of this District through its marketing and sales of the Products in this District.

88. This Court has subject matter jurisdiction over this action pursuant to D.C. Code §§ 28-3905(k)(1)(B), (k)(1)(C), (k)(1)(D), and (k)(2).

89. Venue is proper in this District under 28 U.S.C. § 1391(b). Substantial acts in furtherance of the alleged improper conduct, including the dissemination of false and misleading information regarding the nature and quality of the Products, occurred within this District. The Products are available for purchase at retail stores in the District of Columbia.

PARTIES

90. OCA is a 501(c)(3) non-profit public-interest organization that deals with crucial issues of truth in advertising, accurate food labeling, food safety, genetic engineering, children's health, corporate accountability, environmental sustainability, and related topics.

91. OCA performs its work throughout the United States, including in the District of Columbia. Some of the OCA's staff resides in or near the District of Columbia, including its political director. OCA has members who reside in the District of Columbia and who are targets of the misleading advertising and marketing in this case.

92. OCA was formed in 1998 in the wake of backlash by consumers against the U.S. Department of Agriculture's controversial proposed national regulations for organic food. In its public education, network building, and mobilization activities, OCA works with a broad range of public interest organizations to challenge industrial agriculture, corporate globalization, and to inspire consumers to "Buy Local, Organic, and Fair Made." OCA's website, publications, research, and campaign staff provide an important service for hundreds of thousands of consumers and community activists every month. Its media team provides background information, interviews, and story ideas to television and radio producers and journalists on a daily basis.

93. Thus, OCA's focus is on representing the views and interests of consumers by educating consumers on food safety, industrial agriculture, genetic engineering, corporate accountability, and environmental sustainability issues. OCA uses funds it raises to educate

consumers, increasing their awareness and knowledge of the agricultural production, and to protect the environment by regenerating organic and/or sustainable agriculture. OCA also uses its funds and member base to pressure food companies to adopt honest labeling practices, to the benefit of consumers.

94. OCA has purchased a variety of the Products in order to evaluate the marketing and labeling claims as purportedly being produced with milk from “Caring Dairies,” and produced and sourced in an environmentally beneficial method.

95. At all times mentioned herein, Defendant Ben & Jerry’s Homemade, Inc. was a Vermont corporation with its principal place of business in Burlington, Vermont. It is a wholly owned subsidiary of Defendant Conopco Inc.

96. At all times mentioned herein, Defendant Conopco Inc., doing business as Unilever USA, was a New York corporation with its principal place of business in Englewood Cliffs, New Jersey.

97. Defendants manufacture and/or cause the manufacture of the Products, and market and distribute the Products in retail stores in the District of Columbia and throughout the United States.

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

99. OCA is acting on behalf of its members and for the benefit of the general public as private attorneys general pursuant to D.C. Code § 28-3905(k)(1). OCA is a non-profit organizations pursuant to D.C. Code § 28-3901(a)(14) and a public-interest organization pursuant to D.C. Code § 28-3901(a)(15).

CAUSE OF ACTION

VIOLATION OF THE DISTRICT OF COLUMBIA CONSUMER PROTECTION PROCEDURES ACT

100. Pursuant to D.C. Code §§ 28-3905(k)(1) and 28-3905(k)(2), OCA brings this Count against Unilever on behalf of its members and the general public of the District of Columbia, for Unilever's violation of DC CPPA, D.C. Code § 28-3901, *et seq.*

101. OCA incorporates by reference all the allegations in the preceding paragraphs of this Complaint.

102. Unilever has represented and advertised the Products, including the Glyphosate Products, as made from milk produced by humanely raised cows and produced using environmentally responsible practices, when in fact the Products are produced with milk from regular factory-style, mass-production dairy operations and the Glyphosate Products contain an unnatural biocide widely considered to be environmentally harmful.

103. Unilever's advertising of the Products misrepresents, tends to mislead, and omits facts regarding the source, characteristics, standard, quality, and grade of the Products.

104. The Products, including the Glyphosate Products, lack the characteristics, ingredients, benefits, standards, qualities, or grades that Unilever states and implies in its advertisements.

105. These misstatements, innuendo, and omissions are material and have the tendency to mislead.

106. Unilever knowingly did not sell the Products as advertised.

107. The facts as alleged above demonstrate that Unilever has violated the DC CPPA, D.C. Code § 28-3901 *et seq.* Specifically, Unilever has violated D.C. Code § 28-3904, which makes it an unlawful trade practice to:

- (a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; . . .

- (d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;
- (e) misrepresent as to a material fact which has a tendency to mislead; . . .
- (f) fail to state a material fact if such failure tends to mislead;
- (f-1) [u]se innuendo or ambiguity as to a material fact, which has a tendency to mislead; . . . [or]
- (h) advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

108. The DC CPPA makes such conduct an unlawful trade practice “whether or not any consumer is in fact misled, deceived or damaged thereby.” D.C. Code § 28-3904.

109. Though OCA need not show proof of deception to succeed on its DC CPPA claim, consumers were in fact deceived. Unilever knows and should have known that reasonable consumers would believe that the Products were made from milk produced from humanely raised cows and produced in an environmentally responsible manner, as advertised.

110. OCA has a sufficient nexus to consumers of the Products to adequately represent those interests.

111. Because Unilever misrepresents the characteristics, ingredients, and benefits of the Products; misrepresents the standard, quality, and grade of the Products; misrepresents, fails to state, and uses innuendo and ambiguity in ways which tend to mislead reasonable consumers with regard to material facts about the Products; and advertises the Products without the intent to sell the Products as advertised, Unilever’s marketing of the Products as made from milk produced from humanely raised cows and produced using environmentally responsible practices violates D.C. Code §§ 28-3904(a), (d), (e), (f), (f-1), and (h).

112. Unilever is a “person” within the meaning of D.C. Code § 28-3901(a)(1), is a merchant under § 28-3901(a)(3), and provides “goods” within the meaning of § 28-3901(a)(7).

113. Pursuant to D.C. Code § 28-3905(k)(1)(C), “[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.”

114. Pursuant to D.C. Code § 28-3905(k)(1)(D)(i), “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.”

115. Via §§ 28-3905(k)(1)(C) and (k)(1)(D)(i), the DC CPPA allows for non-profit organizational standing and public interest organizational standing to the fullest extent recognized by the D.C. Court of Appeals in its past and future decisions addressing the limits of constitutional standing under Article III.

116. OCA is a “person” within the meaning of D.C. Code § 28-3901(a)(1), a “non-profit organization” within the meaning of D.C. Code § 28-3901(a)(14), and a “public interest organization” within the meaning of D.C. Code § 28-3901(a)(15).

117. OCA brings this Count against Unilever for Unilever’s violation of the DC CPPA, D.C. Code § 28-3901 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, OCA prays for judgment against Unilever and requests the following relief:

- A. a declaration that Unilever’s conduct is in violation of the DC CPPA;
- B. an order enjoining Unilever’s conduct found to be in violation of the DC CPPA, as well as corrective advertising;

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

D. such further relief, including equitable relief, as this Court may deem just and proper.

JURY TRIAL DEMANDED

OCA hereby demands a trial by jury.

DATED: July 9, 2018



Kim E. Richman (D.C. Bar No. 1022978)

RICHMAN LAW GROUP

81 Prospect Street

Brooklyn, NY 11201

Telephone: (212) 687-8291

Facsimile: (212) 687-8292

krichman@richmanlawgroup.com

Attorneys for Plaintiff