

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

<p>BEYOND PESTICIDES, 701 E Street, SE, Suite 200, Washington, DC 20003,</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center">v.</p> <p>EXXON MOBIL CORPORATION, 5959 Las Colinas Boulevard, Irving, Texas 75039,</p> <p style="text-align:center">Defendant.</p>	<p>Case No. _____</p> <p style="text-align:center"><u>COMPLAINT</u></p> <p style="text-align:center"><u>DEMAND FOR JURY TRIAL</u></p>
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COMPLAINT

On behalf of itself and the general public, Plaintiff Beyond Pesticides, by and through its counsel, brings this action against Defendant Exxon Mobil Corporation (“ExxonMobil”) concerning its false and deceptive marketing representing that it engages in and has invested significantly in the production and use of “clean” energy and environmentally beneficial technology. Beyond Pesticides alleges the following based upon information, belief, and the investigation of its counsel:

INTRODUCTION

1. Dramatic changes to the Earth’s climate have caused concern among the citizens of the District of Columbia and the country.
2. Consumers within the District and across the country believe that climate change poses an existential threat and that these changes are directly caused by the activities of humans.
3. Specifically, consumers believe that humans’ use of fossil fuels for energy and the release of methane gas and carbon dioxide into the air are among the causes of climate change.

4. Due to these concerns, consumers are reevaluating their choices and the effects of their actions on the environment.

5. Because of these concerns, consumers, as ExxonMobil knows, are willing to seek out services or products that cause less of an adverse impact on the environment, and to support companies that purport to share their values, including a commitment to reducing impact on the environment.¹

6. In particular, there is a growing desire among consumers to reduce their reliance on fossil fuels, and to find opportunities that allow them to fulfil their needs while using energy generated through means they consider less harmful to the environment.²

7. Oil and gas companies, because of the threat of climate change and because these industries are seen as engaging in activities that are believed, including by consumers, to cause climate change, are beginning to invest resources into clean, renewable, and less environmentally impactful forms of energy.

8. Traditional oil and gas companies are now publicly setting long-term goals to develop new sources of “clean” energy, to reduce business practices that consumers believe lead to climate change, and to develop other environmentally beneficial technology.

9. At the same time, many of these same companies continue to invest heavily in exploring for fossil fuels and developing infrastructure to refine and deliver these fuels in contravention of their public commitments.

¹ See, e.g., Nielsen, *The Sustainability Imperative: New Insights on Consumer Perception* (Oct. 2015), <https://www.nielsen.com/us/en/insights/report/2015/the-sustainability-imperative-2/> (consumer survey finding that the majority of consumers seek to support sustainable business practices with their purchases, and are more likely to buy products “from a company known for being environmentally friendly.”).

² See, e.g., David Roberts *Utilities Have a Problem: The Public Wants 100% Renewable Energy, and Quick*, Vox, (Oct. 11, 2018, 9:19 AM) www.vox.com/energy-and-environment/2018/9/14/17853884/utilities-renewable-energy-100-percent-public-opinion (stating that 70% of consumers desire electricity made without fossil fuels).

10. ExxonMobil's advertising and marketing mislead the public by presenting ExxonMobil's clean energy activities as a significant proportion of its overall business.

11. In contrast to ExxonMobil's representations, its investments and activities in clean energy constitute only a very small percentage of its total business, the majority of which continues to be based in traditional fossil fuels and in petrochemicals, including those used in environmentally harmful pesticides.

12. In short, ExxonMobil is greatly overstating the level in which it engages in cleaner forms of energy and the extent to which that energy is available, thereby deceiving consumers into believing that even purchases of ExxonMobil's traditional fossil-fuel-based products are an investment in cleaner forms of energy in the future.

13. No reasonable consumer who sees ExxonMobil's representations would expect the size of its investments or the level at which ExxonMobil generates clean energy to be as small as it is, relative to the overall size of ExxonMobil's business.

14. By deceiving consumers about the nature and quality of the products that it produces and sells, and about the nature of its underlying business practices, ExxonMobil is able to capture the growing market of consumers in D.C. and elsewhere who are concerned about climate change and seek to support clean energy.

15. ExxonMobil'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 ExxonMobil's marketing and advertising tend to mislead and are materially deceptive about the true nature and quality of its products and business, Beyond

Pesticides brings this deceptive advertising case on behalf of itself and the general public, and seeks relief including an injunction to halt ExxonMobil's false marketing and advertising.

FACT ALLEGATIONS

17. Plaintiff Beyond Pesticides brings this suit for injunctive relief under the DC CPPA against ExxonMobil, based on misrepresentations and omissions committed by ExxonMobil regarding its business practices, which ExxonMobil represents as consisting substantially of investments in biofuels, carbon capture technology, "clean" energy, including natural gas, and that ExxonMobil plans to reduce the aspects of its business that cause carbon emissions.

18. ExxonMobil's marketing is false and deceptive because the "clean" energy and environmentally beneficial technology championed in its marketing make up only a very small percentage of its overall business and, at the same time, ExxonMobil is increasing its production and distribution of traditional fossil fuels.

19. ExxonMobil knows that consumers increasingly and consciously seek out products and services from environmentally responsible companies.

20. Accordingly, ExxonMobil cultivates an image of creating responsible energy solutions for consumers who wish to avoid harm to our planet, in order to motivate climate-concerned consumers to continue to purchase its products and services.

A. ExxonMobil Portrays Itself as a Company Transitioning Away from Its Fossil Fuel Business.

21. ExxonMobil purports to be an environmentally conscious company that is committed to investing in clean and renewable energy:

Addressing the dual challenge of providing energy while managing emissions requires a long-term perspective, competency in fundamental science and engineering, and significant investment. ExxonMobil has a 135-year history as an

energy innovator and is committed to doing its part to help society address this critical challenge. ExxonMobil continues to make progress on our long-term plans. We do so with a commitment to develop new resources to ensure the world has the energy it needs while also minimizing the environmental impacts, including the risks associated with greenhouse gas emissions and climate change. . . . Over the past two decades, ExxonMobil has invested nearly \$10 billion in technology and programs to reduce emissions, resulting in highly efficient operations that have eliminated or avoided more than 400 million tonnes of CO₂-equivalent emissions.³

22. In sum, a large proportion of ExxonMobil’s advertising references either ExxonMobil’s efforts to reduce emissions overall or the clean energy in which it is engaged in producing.

23. For example, a 2017 advertisement boasted that key facets of ExxonMobil’s business included “improving energy efficiency, developing more clean burning natural gas [t]urning algae into biofuel, reducing energy poverty in the developing world, [and] making cars go further with less[.]” The advertisement concludes by stating that all this is from a company that people thought “just made the gas.”

24. One of the ways that ExxonMobil attempts to make consumers believe it is an environmentally conscious company is by advertising the size of the investments it has made in clean energy or in environmentally beneficial technologies.

25. For example, in its sustainability report, ExxonMobil states that it plans to invest up to \$100 million over 10 years to research and develop advanced lower-emissions technologies.⁴

26. Elsewhere on the same website, it states that it already currently invests \$1 billion per year in its “ongoing commitment to fundamental science and innovation.”⁵

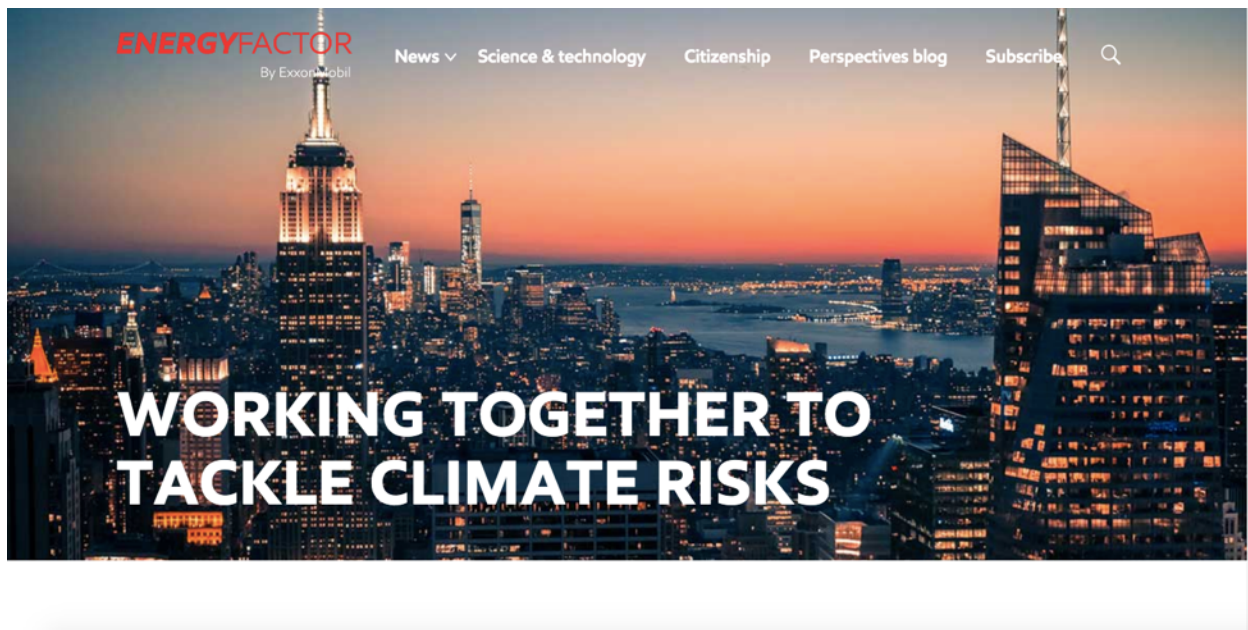
³ *2019 Annual Report*, ExxonMobil.com, 8 (2020), <https://corporate.exxonmobil.com/-/media/Global/Files/investor-relations/annual-meeting-materials/annual-report-summaries/2019-Summary-Annual-Report.pdf>.

⁴ *Developing Innovative Products and Technology*, ExxonMobil.com, <https://corporate.exxonmobil.com/Community-engagement/Sustainability-Report/Environment/Developing-innovative-products-and-technology> (last visited May 15, 2020).

⁵ *Id.*

27. ExxonMobil also maintains the website Energy Factor (energyfactor.com), which focuses on ExxonMobil’s investments in clean energy and new technology.

28. On the Energy Factor website, ExxonMobil states that the current and future investments that it advertises are in addition to the more than \$9 billion ExxonMobil already invested in “researching and developing lower-emission solutions, including carbon capture and storage technology, next-generation biofuels, cogeneration and more efficient manufacturing processes” since 2000.⁶



⁶ *Working Together to Tackle Climate Risks*, EnergyFactor.com, <https://energyfactor.exxonmobil.com/perspectives/working-together-to-tackle-climate-risks/> (last visited May 15, 2020).

Since 2000, we've invested more than \$9 billion in [researching and developing](#) lower-emission solutions, including carbon capture and storage technology, next-generation biofuels, cogeneration and more efficient manufacturing processes.

29. In addition to the investments in unspecified future research ExxonMobil commits to invest in, ExxonMobil also advertises which of its current activities it considers “clean.”

30. For example, on the Energy Factor website, ExxonMobil calls its natural gas unqualifiedly “clean.”⁷

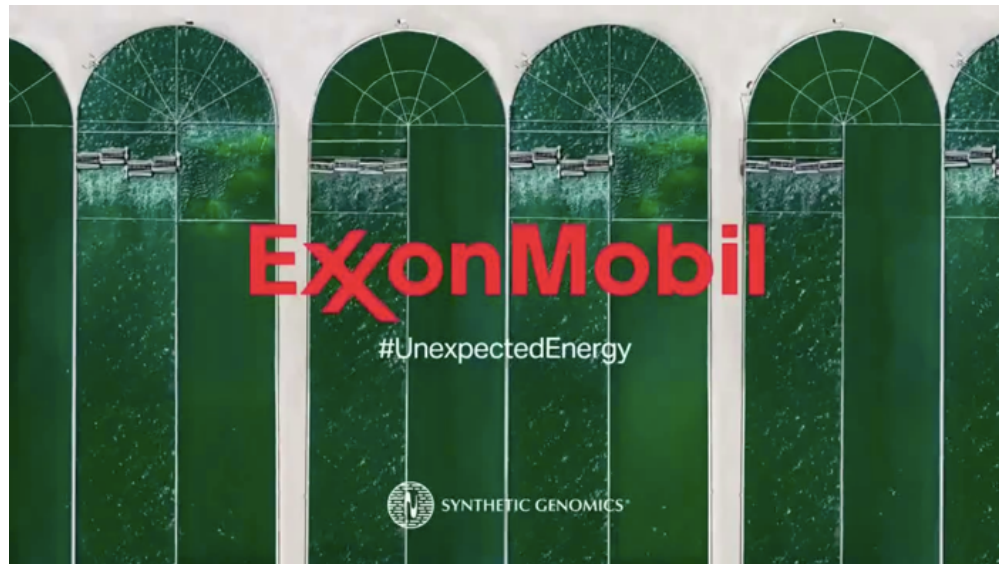
31. It also states that its natural gas is “a critical part of powering North America's daily activities” and “a reliable complement to renewables,” and that “natural gas-fired power plants will be essential to keep power flowing when the wind isn't blowing or the sun isn't shining.”

32. ExxonMobil also advertises its activities researching and formulating “biofuels” as part of its efforts in “clean” energy.

33. Biofuels are combustible fuels made directly from plant or other living matter, rather than being produced by hydrocarbons removed from the earth after the living matter has decayed.

⁷ See *The Power of Natural Gas*, EnergyFactor.com, <https://energyfactor.exxonmobil.com/news/power-of-natural-gas/> (“Today, natural gas impacts lives at an unprecedented scale, generating clean and reliable electricity.”) (last visited May 15, 2020).

34. One recent television advertisement represents that ExxonMobil (through a partnership with Synthetic Genomics) will be producing fuel from algae, thereby reducing carbon emissions by 50% and leading to fields that “grow” fuel.⁸



35. This advertisement does not contain any mention that ExxonMobil is still primarily producing far more traditional fossil fuels than it does any algae-based biofuels.

36. ExxonMobil’s website also contains additional information about its partnership with Synthetic Genomics, stating that it expects to produce only “10,000 barrels of algae-based biofuels per day by 2025.”⁹

37. In addition to its agreement with Synthetic Genomics, ExxonMobil also has a partnership with Clariant and Genomatica, which ExxonMobil states are ready to turn inedible

⁸Exxon Mobil TV Commercial: *Algae Potential*, iSpot.tv (2019) <https://www.ispot.tv/ad/ovGn/exxon-mobil-algae-potential>.

⁹ See *supra* note 4.

cornstalks and other agricultural leftovers into the components needed for biofuel “at commercial scale.”¹⁰

38. Another recent television advertisement compares ExxonMobil’s carbon capture and storage (“CCS”) technology to photosynthesis, the process by which plants intake carbon dioxide and obtain their energy from the sun: “Plants capture CO₂. What if other kinds of plants captured it too? If these industrial plants had technology that captured carbon like trees, we could help lower emissions.”¹¹

39. This advertisement does not contain any mention that ExxonMobil is still primarily producing traditional fossil fuels but instead states that ExxonMobil is “working on ways to improve [CCS technology]. So, plants can be a little more like plants” and directs viewers to ExxonMobil’s Energy Factor website.¹²

40. According to iSpot.tv, an advertising measurement and tracking company, this advertisement had been especially impactful, generating over 1.8 billion impressions and an attention score (a metric showing a viewer’s tendency to watch an advertisement instead of changing the channel, fast-forwarding, or turning off the television) of 94.85/100.¹³

41. ExxonMobil positions itself as a leader of CCS technology stating that it has been working on its technology since the 1970s and that “ExxonMobil has cumulatively captured more

¹⁰ *From Farm Leftovers to Biofuel*, EnergyFactor.com <https://energyfactor.exxonmobil.com/science-technology/farm-leftovers-biofuel/> (last visited May 15, 2020).

¹¹ *Exxon Mobil TV Commercial: Carbon Capture*, iSpot.tv (2019) <https://www.ispot.tv/ad/IW6P/exxon-mobil-carbon-capture>.

¹² *Id.*

¹³ *Insights Report Vehicle: Oil & Fuel Advertising on TV*, iSpot.tv, 7 (2019), https://storage.pardot.com/797423/15597/2019_iSpot_Insights_Oil_Fuel2.pdf. A Nielsen consumer survey found that viewing “an ad on television about the social and/or environmental good the product’s company is doing” is a “top sustainability purchasing driver” for consumers. See Nielsen, *supra* note 1.

CO2 than any other company, accounting for more than 40 percent of cumulative CO2 captured” and it has an interest in more than one-fifth of the world’s total carbon capture capacity.¹⁴

42. Overall, ExxonMobil’s advertising and websites give the impression it has a significant engagement in and has invested significantly in the production and use of “clean” energy and is a market leader in developing and employing environmentally beneficial technology.

43. Unfortunately for consumers, this impression does not match the truth.

44. In actuality, ExxonMobil’s investments are minuscule compared to the size of its entire business. ExxonMobil’s investment in renewable energy and CCS are dwarfed by its core business of traditional fossil fuel production—still considered by consumers to be a leading cause of climate change.

B. ExxonMobil’s Investment in Clean Energy and Environmentally Beneficial Technology is Miniscule Compared to Its Core Business.

45. As discussed above, ExxonMobil’s advertisements make at least three representations related to ExxonMobil’s clean energy and technology investments:

- (a) up to \$100 million over 10 years to research and develop advanced lower-emissions technologies;¹⁵
- (b) \$1 billion per year in its “ongoing commitment to fundamental science and innovation” including environmentally beneficial technologies;¹⁶ and
- (c) more than \$9 billion since 2000 invested in “researching and developing lower-emission solutions, including carbon capture and storage technology, next-generation biofuels, cogeneration and more efficient manufacturing processes.”

¹⁴ See *supra* note 4.

¹⁵ *Id.*

¹⁶ *Id.*

46. While this may sound like a large amount of money to consumers, this investment is only a small part of all expenditures for ExxonMobil.

47. “Up to \$100 million over 10 years” to be spent on lower-emissions technologies averages to \$10 million a year.

48. In 2019, ExxonMobil’s total capital and exploration expenditures were \$31.1 billion.

49. Assuming that ExxonMobil continues to invest in its overall business at the same level, “\$100 million over 10 years” equals 0.03% of its total capital and exploration expenditures annually.

50. Even if ExxonMobil invested the entire \$100 million in 2019, it would still only equal less than one-third of one percent of its total investments.

51. Similarly, the \$1 billion annually that ExxonMobil invests in its “ongoing commitment to fundamental science and innovation” which, upon information and belief, includes research and development for several segments of its business, not just those related to clean energy, is equal to just 3.2% of ExxonMobil’s total capital expenditures in 2019.

52. Since 2000, ExxonMobil’s capital expenditures total well over \$465 billion. Thus, the \$9 billion in environmentally beneficial investments touted by ExxonMobil demonstrate that no more than 2% of ExxonMobil’s capital expenditures in the past 20 years was invested in lower-emission solutions, carbon capture and storage technology, biofuels, cogeneration, and more efficient manufacturing processes, combined.

53. The investments ExxonMobil has made in clean energy and environmentally beneficial technology are significantly less than investments ExxonMobil continues to make in its traditional fossil fuel business.

54. Upon information and belief, such large investments in traditional fossil fuel activities and infrastructure are economically feasible only because ExxonMobil expects the investments to produce revenue for many years to come.

55. Contrary to the impression given by the advertisement, ExxonMobil's overall engagement in fossil fuels is not being reduced but is actually growing.

56. ExxonMobil's total crude oil production in 2019 was 5.6% higher than in 2018.

57. In addition to its fossil fuel production, ExxonMobil also produces petrochemicals that are used for, among other things, the formulation of pesticides.¹⁷

58. Petroleum-based pesticides are widely believed to be environmentally harmful. In addition to the harms associated with the extraction and production of the petroleum itself, the use of the resulting petrochemicals in agriculture leads to more toxic chemicals entering the environment and the food supply. *See infra* ¶¶ 130-31.

59. Upon information and belief, ExxonMobil selectively highlights its small investments in low-carbon technologies in order to make consumers believe that its clean energy production and development make up a significant part of its overall business, while its fossil fuel business continues to expand.

60. Nowhere in its advertisements touting clean energy production does ExxonMobil state what percentage of the company's investment is in oil and gas compared to how much is invested in clean energy.

61. ExxonMobil's investments in traditional fossil fuels, which will extend the future of fossil fuels for decades, when compared to its relatively small investments in "clean" energy

¹⁷ *Crop Protection*, ExxonMobilChemical.com, <https://www.exxonmobilchemical.com/en/solutions-by-industry/agriculture/crop-protection> (last visited May 15, 2020).

and environmentally beneficial technology is incompatible with reasonable consumers' understanding of the representations ExxonMobil makes regarding those investments.

C. Natural Gas Is Not a “Clean,” “Critical,” or “Essential” Replacement for Renewable Energy Sources.

62. ExxonMobil's advertisements represent that its natural gas is “clean,” “critical,” and an “essential” alternative to renewable forms of energy.

63. Natural gas is not “clean.” It is a fossil fuel comprised primarily of methane, a greenhouse gas that has a greater potential of negatively affecting climate change than carbon dioxide over a 20-year period.¹⁸

64. The extraction, transportation, and use of natural gas release methane into the atmosphere.

65. The combustion of natural gas to produce energy releases carbon dioxide into the atmosphere.

66. The demand for natural gas has led to the proliferation of horizontal drilling and hydraulic fracturing (i.e. fracking) across the country.

67. Well-publicized scientific studies show that fracking and horizontal drilling leads to pollution of the environment and groundwater and to health and safety risks for humans. Reasonable consumers, therefore, do not associate fracking and horizontal drilling with clean energy.

68. Natural gas is frequently transported in the form of liquid natural gas (“LNG”).

69. The process to turn natural gas into liquid involves lowering the gas to an extremely low temperature, which uses a great deal of energy that is usually provided by fossil fuels.

¹⁸ Rajendra Pachauri, et al., *Climate Change 2014: Synthesis Report*, Intergovernmental Panel on Climate Change, 87 (2015), www.ipcc.ch/site/assets/uploads/2018/02/SYR_AR5_FINAL_full.pdf.

70. The extraction, storage, transportation, and use of natural gas is not what reasonable consumers would consider “clean,” even if, when burned, it releases less carbon dioxide than coal.

71. Because solar and wind energy relies on natural phenomena that may not always be present, ExxonMobil represents that natural gas can be used as a back-up fuel to balance supply and demand and that its use is more “reliable” than renewables and that the use of natural gas is “critical” or “essential.”

72. However, this is not the case. Natural gas, far from being used as a back-up fuel supply, continues to make up the vast majority of electricity generation in the United States.

73. Even if U.S. electricity were primarily produced through renewable sources, natural gas is not the best back-up energy source.

74. For example, at least one study found that battery storage systems can address up to 90% of demand that would otherwise currently be filled by natural gas.¹⁹

75. ExxonMobil’s representations that natural gas use is inevitable and has no (or reduced) environmental drawbacks misinforms the public into believing it is an unqualified sustainable option.

D. ExxonMobil’s Representations Regarding its “Biofuel” Production are Overstated.

76. “Biofuel,” typically in the form of either bioethanol or biodiesel, can be made out of living plants and organisms without the need for drilling for crude oil.

77. However, biofuels are still combustible, carbon-based fuels that emit carbon dioxide when burned and can still contribute to climate change.

¹⁹ Julian Spector, *Just How Much Business Can Batteries Take From Gas Peakers?* Greentech Media (May 16, 2018), <https://www.greentechmedia.com/articles/read/just-how-much-business-can-batteries-take-from-gas-peakers>.

78. Many consumers consider biofuel to be a useful alternative while transitioning to renewable resources, because the production of biofuel does not involve the traditional oil exploration, and the plant matter biofuel is made of can play a role in removing carbon from the atmosphere.

79. ExxonMobil advertises biofuel production as part of two partnerships: one with Synthetic Genomics and one with Clariant and Genomatica.

80. ExxonMobil represents that its biofuel operations are made up of technology that turns either algae (with Synthetic Genomics) or cornstalks (with Clariant and Genomatica) into biofuel.

81. Currently, neither ExxonMobil nor any of these three partner entities produce any biofuel.

82. The United States produces over half of the world's bioethanol fuel.²⁰

83. By advertising its research into alternative sources for biofuel inputs, ExxonMobil creates the false impression that it currently produces some portion of the biofuel produced in the United States.

84. Even if the current research into these sources of biofuel advances as ExxonMobil predicts, the result would be dwarfed by ExxonMobil's fossil fuel businesses.

85. ExxonMobil predicts that by 2025, Synthetic Genomics will be able to produce 10,000 barrels of algae-based biofuels per day.

86. Based on ExxonMobil's current production, these 10,000 barrels would represent only 0.019% of the 5.4 million barrels of petroleum products ExxonMobil sells per day through

²⁰ Renewable Fuel Association, *Annual Fuel Ethanol Production*, ethanolrfa.org, <https://ethanolrfa.org/statistics/annual-ethanol-production/> (last visited May 15, 2020).

its retail channels.

E. ExxonMobil Overstates the Benefits of and the Level it Engages in Carbon Capture and Storage Technology.

87. ExxonMobil has been developing carbon capture and storage (“CCS”) technology since the 1970s.

88. ExxonMobil represents that it “has cumulatively captured more CO₂ than any other company, accounting for more than 40 percent of cumulative CO₂ captured” and that it has an interest in more than one-fifth of the world’s total carbon capture capacity.

89. ExxonMobil’s representations create the impression that it is already engaged in CCS as a major part of its business operations, and further development will offset the carbon release through the combustion of the petroleum products it sells.

90. However, CCS technology has yet to be proven to be technologically or financially viable at a scale sufficient to offset the effects of ExxonMobil’s production and the use of its petroleum products.²¹

91. ExxonMobil’s advertising also overstates how much its current CCS technology can make “[industrial] plants more like [photosynthetic] plants.” A genuine photosynthetic plant is capable of pulling carbon dioxide directly from the air wherever it is planted, whereas ExxonMobil’s industrial CCS is primarily only incorporated as part of major point sources, such as power plants.

92. Thus, ExxonMobil’s CCS systems have little to no effect on the carbon dioxide produced from consumers burning ExxonMobil gasoline.

²¹ Oakley Shelton-Thomas, *Sorry, Fossil Fuel Industry. ‘Carbon Capture’ Isn’t A Magic Climate Cure*, Food and Water Watch (Apr. 10, 2020), <https://www.foodandwaterwatch.org/sorry-carbon-capture-isnt-magic-climate-cure>.

93. In fact, ExxonMobil's CCS systems are being used in ways that consumers consider environmentally harmful.

94. For example, one of ExxonMobil's existing CCS systems is based at the Shute Creek Gas Processing Plant near LaBarge, Wyoming.

95. Once the carbon dioxide is captured from the Shute Creek plant, it is transferred via pipeline to existing oil exploration operations to be used for enhanced oil recovery.

96. Enhanced oil recovery uses captured carbon dioxide to extract crude oil from oil fields that cannot be extracted otherwise, thereby increasing the amount of crude oil that can be refined into gasoline and then burned.

97. In addition to increasing the amount of crude oil produced, CCS enhanced oil recovery can also bring heavy metals and radioactive materials to the surface, where they can enter soil and water supplies.

98. Overall, ExxonMobil's representations give a false impression of the relative scale of "clean" energy and environmentally beneficial technology in ExxonMobil's business.

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

99. While ExxonMobil's business does harm to the environment directly, the claim alleged herein relates only to ExxonMobil's false and misleading advertising practices.

100. ExxonMobil holds itself out to the public as a trusted expert in "clean" energy production and environmentally beneficial technology.

101. The true nature of ExxonMobil's business is known to ExxonMobil.

102. Therefore, ExxonMobil has actual and constructive knowledge of the extent of its business practices and investments. As one of the world's leading oil companies, ExxonMobil

knows or should know that its business practices do not meet the levels that reasonable consumers would expect based on ExxonMobil's representations.

103. ExxonMobil knows what representations it makes regarding its products and services.

104. Consumers frequently rely on the information provided in television ads, print ads, social media, and on companies' websites when making the decision to purchase goods or services.

105. Reasonable consumers lack the information and scientific knowledge necessary to ascertain the true nature of ExxonMobil's practices.

106. Reasonable consumers must, and do, rely on ExxonMobil to honestly report the nature of its products and its business practices.

107. Reasonable consumers are misled and deceived by ExxonMobil's representations into believing that ExxonMobil is committed to developing and currently substantially engaged in clean and renewable energy.

108. In 2019, ExxonMobil spent more on television advertising than any of its competitors. In fact, when combined with television advertising expenditures with ExxonMobil's other brand, Mobil, its total television advertising expenditures were greater than the next three largest advertisers combined.²²

109. In making the false, misleading, and deceptive representations and omissions at issue, ExxonMobil also knew and intended that consumers would seek out products and services that were represented as being environmentally beneficial or, at least, environmentally harmless.

²² iSpot.tv, *supra* note 13, at 4.

110. ExxonMobil's conduct in representing that its business is environmentally progressive and committed to investing in clean and renewable energy deceived and/or is likely to deceive the public.

111. Reasonable consumers cannot discover the true nature of ExxonMobil's businesses from ExxonMobil's representations.

112. Discovery of the true nature of ExxonMobil's businesses requires knowledge of the energy industry that is not available to the average reasonable consumer.

113. The true nature of ExxonMobil's business is known to ExxonMobil, but it has not been disclosed to consumers in the District of Columbia.

114. To this day, ExxonMobil continues to obscure facts regarding the true nature of its business.

115. Upon information and belief, ExxonMobil has failed to remedy the problems with the marketing of its products and services.

116. D.C. consumers are at risk of real, immediate, and continuing harm if ExxonMobil's misleading representations continue.

117. ExxonMobil has failed to provide adequate relief to D.C. consumers as of the date of filing this Complaint.

118. Plaintiff contends that ExxonMobil's products and services were sold pursuant to deceptive, unfair, and unlawful trade practices.

119. Plaintiff seeks declaratory relief in the form of an order declaring ExxonMobil's conduct to be unlawful, as well as injunctive relief putting an end to ExxonMobil's deceptive and unfair business practices.

JURISDICTION AND VENUE

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

121. Beyond Pesticides is headquartered in, and has members and staff based in, the District of Columbia.

122. This Court has personal jurisdiction over Defendant pursuant to D.C. Code § 13-423. Defendant has sufficient minimum contacts with the District of Columbia to establish personal jurisdiction of this Court over it because, *inter alia*, ExxonMobil 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 its products and services in this District.

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

PARTIES

124. Beyond Pesticides is a 501(c)(3) non-profit, public-interest organization whose mission is to protect the environment and to educate consumers and businesses about the harms that humans have on the environment.

125. Beyond Pesticides is based in the District of Columbia and performs its work throughout the United States, including in the District of Columbia.

126. Beyond Pesticides was formed in 1981 as a non-profit organization meant to inform the public of the dangers of toxic pesticides, and advocate on behalf of the public against their use.

127. Beyond Pesticides educates the public so consumers can make informed choices when they shop. Beyond Pesticides' website, publications, public education, research, network building, and mobilization activities provide an important service to consumers and community activists.²³

128. Beyond Pesticides 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.

129. For example, Beyond Pesticides produces the quarterly newsletter *Pesticides and You*, which provides in-depth articles and a voice for pesticide safety and alternatives. In 2000, an article appeared in *Pesticides and You* that identified how global warming could lead to a boom in insect populations that would require a greater application of pesticides.²⁴ In 2007, *Pesticides and You* published another article that took a more proactive response to climate change, arguing that farmers can reduce their carbon footprint and counteract some of the effects of climate change by transitioning to organic farming.²⁵

130. With many toxic pesticides, herbicides, and fertilizers deriving from petroleum, the fossil fuel industry has long been a central concern of Beyond Pesticides.²⁶ Beyond Pesticides has

²³ See, e.g., Beyond Pesticides, *Environmental Benefits of Organic Agriculture*, <https://www.beyondpesticides.org/programs/organic-agriculture/why-organic/environmental-benefits> (last visited May 15, 2020) (describing the challenges that climate change has on agriculture and how organic farming can be a tool to reverse some of its effects).

²⁴ Paul R. Epstein, *Is Global Warming Harmful to Health?* *Pesticides and You*, <https://www.beyondpesticides.org/assets/media/documents/infoservices/pesticidesandyou/Winter%2000-01/Is%20Global%20Warming%20Harmful%20to%20Health.pdf>.

²⁵ Paul Hepperly, *The Organic Farming Response to Climate Change*, *Pesticides and You* (Spring 2007), <https://www.beyondpesticides.org/assets/media/documents/infoservices/pesticidesandyou/Spring%202007/hepperly.pdf>.

²⁶ See, e.g., Beyond Pesticides, *11 Reasons to Buy Local and Buy Organic*, *Pesticides and You* (Spring 1993), <https://www.beyondpesticides.org/assets/media/documents/organicfood/reportsandpublications/11%20reasons.pdf> (noting that one-fifth of all petroleum in the United States is used in agriculture, in the form of harmful pesticides and fertilizers).

actively campaigned to educate the public and policymakers about the threat posed by such petroleum-based chemicals, which enter the environment and our food supply, killing wildlife and increasing the risk of disease in human populations.²⁷ Beyond Pesticides' executive director served on the U.S. government's National Organic Standards Board from 2010 to 2015, overseeing regulation of harmful petroleum-based chemicals under the Organic Foods Production Act.

131. Beyond Pesticides has also campaigned on the dangers associated with the extraction and production of petroleum itself, which damages the soil and water, directly contaminating the food supply and making organic farming—and thus the phaseout of toxic pesticides—more difficult.²⁸

132. Consequently, Beyond Pesticides has a sufficient nexus to consumers of ExxonMobil's services to adequately represent those interests.

133. Defendant ExxonMobil is one of the largest oil companies in the world and produces and markets petroleum under its Exxon and Mobil brands, as well as the Esso brand.

134. At all times mentioned herein, ExxonMobil was and is a publicly traded corporation incorporated in New Jersey and maintains its headquarters in Irving, Texas. Defendant was and is, at all relevant times, engaged in commercial transactions throughout the District of Columbia.

135. ExxonMobil markets and sells its products and services in the District of Columbia and throughout the United States.

²⁷ Beyond Pesticides, *The Truth About Mosquitoes, Pesticides and West Nile Virus: A Beyond Pesticides Fact Sheet*, <https://www.beyondpesticides.org/programs/mosquitos-and-insect-borne-diseases/documents/the-truth-about-mosquitoes,-pesticides-and-west-nile-virus> (last visited May 15, 2020) (describing how petroleum distillates in common pesticides exacerbate harms to health and the environment).

²⁸ See, e.g., Beyond Pesticides, *Extreme Weather Events Create Chemical Health Risks* (Sept. 28, 2017), <https://beyondpesticides.org/dailynewsblog/2017/09/extreme-weather-events-create-chemical-health-risks/>.

136. Upon information and belief, ExxonMobil has caused harm to the general public of the District of Columbia.

137. Beyond Pesticides is acting on behalf of itself and for the benefit of the general public as a private attorney general pursuant to D.C. Code § 28-3905(k)(1). Beyond Pesticides is 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**

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

139. Plaintiff incorporates by reference all the allegations in the preceding paragraphs of this Complaint.

140. ExxonMobil represents that it engages in cleaner forms of energy at a significant level, when in fact, its core business remains entrenched in the production and delivery of fossil fuels.

141. ExxonMobil's advertising misrepresents, tends to mislead, and omits facts regarding the characteristics, standard, quality, and grade of its business practices and the products and services it sells.

142. ExxonMobil's products, services, and business practices lack the characteristics, benefits, standards, qualities, or grades that ExxonMobil states and implies in its advertisements.

143. ExxonMobil knowingly did not sell its products and services as advertised.

144. The facts, as alleged above, demonstrate that ExxonMobil has violated the DC CPPA, D.C. Code § 28-3901 *et seq.* Specifically, ExxonMobil 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.

145. 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.

146. Plaintiff Beyond Pesticides need not show proof of deception to succeed on its DC CPPA claim; nevertheless, upon information and belief, consumers were, in fact, deceived.

147. Beyond Pesticides has a sufficient nexus to consumers of ExxonMobil’s products and services to adequately represent those interests.

148. Because ExxonMobil misrepresents the characteristics and benefits of the products it provides; misrepresents the standard, quality, and grade of the products; and advertises its products and services without the intent to provide them as advertised, ExxonMobil’s marketing

of its services violates D.C. Code §§ 28-3904(a), (d), (e), (f), (f-1), and (h).

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

150. Any consumer has the right to bring an action for redress of ExxonMobil’s unlawful behavior, *see* D.C. Code § 28-3905(k)(1)(A), and the statute does not limit consumer plaintiffs according to whether they purchased the product at issue. Nevertheless, as alleged in this Complaint, the petroleum products are marketed and provided in the District, and consumers within the District have obtained these products under the misrepresentations made by ExxonMobil. Therefore, a variety of purchasing and non-purchasing consumers could bring an action against ExxonMobil based on the misrepresentations and omissions listed in this Complaint.

151. 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.”

152. The only limitation on this power of a public interest organization to act on behalf of consumers is that the public interest organization must have “sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” D.C. Code § 28-3905(k)(1)(D)(ii). As set forth in this Complaint, *see supra* ¶¶ 124-132, Beyond Pesticides was founded with the purpose of advocating for and educating consumers, including consumers in the District of Columbia, in the arena of environmental responsibility. In addition, Beyond Pesticides has retained the undersigned competent counsel, who have significant experience in litigating

under the CPPA, to pursue this action, and Beyond Pesticides has previously represented District consumers in similar actions under the CPPA.

153. Via § 28-3905(k)(1)(D)(i), the DC CPPA allows for 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.

154. Beyond Pesticides is a “person” within the meaning of D.C. Code § 28-3901(a)(1) and a “public interest organization” within the meaning of D.C. Code § 28-3901(a)(15).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Beyond Pesticides prays for judgment against Defendant ExxonMobil, and requests the following relief:

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

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

DATED: May 15, 2020



Kim E. Richman (Bar No. 1022978)
Richman Law Group
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New York, NY 10027
Telephone: (212) 687-8291
Facsimile: (212) 687-8292
krichman@richmanlawgroup.com

Attorney for Plaintiff

Superior Court of the District of Columbia

CIVIL DIVISION- CIVIL ACTIONS BRANCH INFORMATION SHEET

BEYOND PESTICIDES,

Case Number: _____

vs

Date: May 15, 2020

EXXON MOBIL CORPORATION

One of the defendants is being sued
in their official capacity.

Name: <i>(Please Print)</i> Kim E. Richman	Relationship to Lawsuit
Firm Name: Richman Law Group	<input checked="" type="checkbox"/> Attorney for Plaintiff
Telephone No.: (718) 878-4707 Six digit Unified Bar No.: 1022978	<input type="checkbox"/> Self (Pro Se)
	<input type="checkbox"/> Other: _____

TYPE OF CASE: Non-Jury 6 Person Jury 12 Person Jury
Demand: \$ N/A Other: _____

PENDING CASE(S) RELATED TO THE ACTION BEING FILED

Case No.: _____ Judge: _____ Calendar #: _____

Case No.: _____ Judge: _____ Calendar#: _____

NATURE OF SUIT: *(Check One Box Only)*

A. CONTRACTS

COLLECTION CASES

- | | | |
|---|--|---|
| <input type="checkbox"/> 01 Breach of Contract | <input type="checkbox"/> 14 Under \$25,000 Pltf. Grants Consent | <input type="checkbox"/> 16 Under \$25,000 Consent Denied |
| <input type="checkbox"/> 02 Breach of Warranty | <input type="checkbox"/> 17 OVER \$25,000 Pltf. Grants Consent | <input type="checkbox"/> 18 OVER \$25,000 Consent Denied |
| <input type="checkbox"/> 06 Negotiable Instrument | <input type="checkbox"/> 27 Insurance/Subrogation | <input type="checkbox"/> 26 Insurance/Subrogation |
| <input type="checkbox"/> 07 Personal Property | Over \$25,000 Pltf. Grants Consent | Over \$25,000 Consent Denied |
| <input type="checkbox"/> 13 Employment Discrimination | <input type="checkbox"/> 07 Insurance/Subrogation | <input type="checkbox"/> 34 Insurance/Subrogation |
| <input type="checkbox"/> 15 Special Education Fees | Under \$25,000 Pltf. Grants Consent | Under \$25,000 Consent Denied |
| | <input type="checkbox"/> 28 Motion to Confirm Arbitration
Award (Collection Cases Only) | |

B. PROPERTY TORTS

- | | | |
|---|---|--------------------------------------|
| <input type="checkbox"/> 01 Automobile | <input type="checkbox"/> 03 Destruction of Private Property | <input type="checkbox"/> 05 Trespass |
| <input type="checkbox"/> 02 Conversion | <input type="checkbox"/> 04 Property Damage | |
| <input type="checkbox"/> 07 Shoplifting, D.C. Code § 27-102 (a) | | |

C. PERSONAL TORTS

- | | | |
|---|--|---|
| <input type="checkbox"/> 01 Abuse of Process | <input type="checkbox"/> 10 Invasion of Privacy | <input type="checkbox"/> 17 Personal Injury- (Not Automobile,
Not Malpractice) |
| <input type="checkbox"/> 02 Alienation of Affection | <input type="checkbox"/> 11 Libel and Slander | <input type="checkbox"/> 18 Wrongful Death (Not Malpractice) |
| <input type="checkbox"/> 03 Assault and Battery | <input type="checkbox"/> 12 Malicious Interference | <input type="checkbox"/> 19 Wrongful Eviction |
| <input type="checkbox"/> 04 Automobile- Personal Injury | <input type="checkbox"/> 13 Malicious Prosecution | <input type="checkbox"/> 20 Friendly Suit |
| <input checked="" type="checkbox"/> 05 Deceit (Misrepresentation) | <input type="checkbox"/> 14 Malpractice Legal | <input type="checkbox"/> 21 Asbestos |
| <input type="checkbox"/> 06 False Accusation | <input type="checkbox"/> 15 Malpractice Medical (Including Wrongful Death) | <input type="checkbox"/> 22 Toxic/Mass Torts |
| <input type="checkbox"/> 07 False Arrest | <input type="checkbox"/> 16 Negligence- (Not Automobile,
Not Malpractice) | <input type="checkbox"/> 23 Tobacco |
| <input type="checkbox"/> 08 Fraud | | <input type="checkbox"/> 24 Lead Paint |

SEE REVERSE SIDE AND CHECK HERE IF USED

Information Sheet, Continued

C. OTHERS

- | | |
|---|---|
| <input type="checkbox"/> 01 Accounting | <input type="checkbox"/> 17 Merit Personnel Act (OEA) |
| <input type="checkbox"/> 02 Att. Before Judgment | (D.C. Code Title 1, Chapter 6) |
| <input type="checkbox"/> 05 Ejectment | <input type="checkbox"/> 18 Product Liability |
| <input type="checkbox"/> 09 Special Writ/Warrants
(DC Code § 11-941) | <input type="checkbox"/> 24 Application to Confirm, Modify,
Vacate Arbitration Award (DC Code § 16-4401) |
| <input type="checkbox"/> 10 Traffic Adjudication | <input type="checkbox"/> 29 Merit Personnel Act (OHR) |
| <input type="checkbox"/> 11 Writ of Replevin | <input type="checkbox"/> 31 Housing Code Regulations |
| <input type="checkbox"/> 12 Enforce Mechanics Lien | <input type="checkbox"/> 32 Qui Tam |
| <input type="checkbox"/> 16 Declaratory Judgment | <input type="checkbox"/> 33 Whistleblower |

II.

- | | | |
|--|---|--|
| <input type="checkbox"/> 03 Change of Name | <input type="checkbox"/> 15 Libel of Information | <input type="checkbox"/> 21 Petition for Subpoena
[Rule 28-I (b)] |
| <input type="checkbox"/> 06 Foreign Judgment/Domestic | <input type="checkbox"/> 19 Enter Administrative Order as
Judgment [D.C. Code § | <input type="checkbox"/> 22 Release Mechanics Lien |
| <input type="checkbox"/> 08 Foreign Judgment/International | 2-1802.03 (h) or 32-151 9 (a)] | <input type="checkbox"/> 23 Rule 27(a)(1)
(Perpetuate Testimony) |
| <input type="checkbox"/> 13 Correction of Birth Certificate | <input type="checkbox"/> 20 Master Meter (D.C. Code § | <input type="checkbox"/> 24 Petition for Structured Settlement |
| <input type="checkbox"/> 14 Correction of Marriage
Certificate | 42-3301, et seq.) | <input type="checkbox"/> 25 Petition for Liquidation |
| <input type="checkbox"/> 26 Petition for Civil Asset Forfeiture (Vehicle) | | |
| <input type="checkbox"/> 27 Petition for Civil Asset Forfeiture (Currency) | | |
| <input type="checkbox"/> 28 Petition for Civil Asset Forfeiture (Other) | | |

D. REAL PROPERTY

- | | |
|--|--|
| <input type="checkbox"/> 09 Real Property-Real Estate | <input type="checkbox"/> 08 Quiet Title |
| <input type="checkbox"/> 12 Specific Performance | <input type="checkbox"/> 25 Liens: Tax / Water Consent Granted |
| <input type="checkbox"/> 04 Condemnation (Eminent Domain) | <input type="checkbox"/> 30 Liens: Tax / Water Consent Denied |
| <input type="checkbox"/> 10 Mortgage Foreclosure/Judicial Sale | <input type="checkbox"/> 31 Tax Lien Bid Off Certificate Consent Granted |
| <input type="checkbox"/> 11 Petition for Civil Asset Forfeiture (RP) | |



Attorney's Signature

May 15, 2020

Date