

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

BEYOND PESTICIDES 701 E Street SE, Suite 200 Washington, DC 20003 ORGANIC CONSUMERS ASSOCIATION 6771 S Silver Hill Dr Finland, MN 55603 TOXIN FREE USA P.O. Box 8273 New Fairfield, CT 06812 Plaintiffs, v. DRISCOLL’S INC., 345 Westridge Drive, Watsonville, CA 95076, Defendant.	Case No. _____ COMPLAINT DEMAND FOR JURY TRIAL
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INTRODUCTION

Plaintiffs Beyond Pesticides, Organic Consumers Association, and Toxin Free USA bring this action against Defendant Driscoll’s, Inc., regarding its unfair and deceptive marketing practices relating to berries it markets and sells in the District of Columbia. Defendant makes two main categories of unfair or deceptive claims to D.C. consumers about its berries:

1. Driscoll’s represents that its berries are grown in a dynamic biological environment in harmony with the environment.
2. Driscoll’s claims it is committed to sustainability, including sustainable water management and sustainable packaging, and to recycling all its clamshell containers and field plastics.

3. In reality, Driscoll's berries are grown using environmentally harmful methods involving unsustainable water use and enormous amounts of plastic, little of which is recycled. Thus, Driscoll's marketing violates multiple provisions of the Consumer Protection Procedures Act ("CPPA"), D.C. Code §§ 28-3901, *et seq*, and Plaintiffs bring this complaint on behalf of themselves, the general public of the District of Columbia, and District of Columbia consumers, seeking an injunction that will end the unfair or deceptive marketing at issue.

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over the parties in this case. Plaintiffs Beyond Pesticides, Organic Consumers Association, and Toxin Free USA, by filing this Complaint, consent to this Court having personal jurisdiction over them.

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

6. Upon information and belief, Driscoll's solicits business, engages in a persistent course of conduct, and/or derives substantial revenue from goods used or consumed in the District of Columbia.

7. Driscoll's markets to consumers within the District of Columbia. Driscoll's products can be, and are, purchased in the District by D.C. consumers who have access to Driscoll's marketing representations.

8. 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.

9. 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.

10. Plaintiffs, who bring this case on behalf of themselves and D.C. consumers, have an interest in vindicating their rights as conferred by the CPPA related to Defendant's unfair or deceptive trade practices. Plaintiffs have an interest in prosecuting their case within the District, which is where the alleged injuries occurred and where the relevant products were advertised for purchase and/or purchased.

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

12. Venue is proper in this Court pursuant to D.C. Code Section 28-3905(k)(2) and because Driscoll's directs its marketing at consumers within the District of Columbia, sells its products in the District, and has caused injury in the District. Plaintiffs seek to represent D.C. consumers and the general public of the District.

13. Pursuant to D.C. Code Section 28-3905(k)(2), this action shall be brought in the Superior Court of the District of Columbia.

14. This action seeks injunctive and declaratory relief but no money damages. Following the principles of non-aggregation set forth in *Snyder v. Harris*, 394 U.S. 332, 335 (1969), federal jurisdiction is not present, and this action is not subject to removal in federal court. *See, e.g., Inst. For Truth in Mktg. v. Total Health Network Corp.*, 321 F. Supp. 3d 76, 89 (D.D.C. 2018); *Organic Consumers Ass'n v. R.C. Bigelow, Inc.*, 314 F. Supp. 3d 344, 350 (D.D.C. 2018); *Animal Legal Defense Fund v. Hormel Foods Corp.*, 249 F. Supp. 3d 53, 59 (D.D.C. 2017).

PARTIES

15. Plaintiff Beyond Pesticides is a 501(c)(3) nonprofit, public interest organization that is based in the District of Columbia and performs its work throughout the United States,

including in D.C.

16. Beyond Pesticides was formed in 1981 as a nonprofit organization with the goal of informing the public of the dangers of toxic pesticides and advocating on behalf of the public against their use.

17. Beyond Pesticides' mission is to protect public health and the environment and to lead the transition to a world free of toxic pesticides. As part of its mission, Beyond Pesticides advocates for and educates consumers about reducing pesticide and chemical use in agriculture¹ and "seeks to protect healthy air, water, land, and food" for present and future generations.²

18. Through its work, Beyond Pesticides has a strong interest in truth in advertising and accurate labeling of consumer goods. For example, Beyond Pesticides has often written about the problem of companies making misleading statements about the environmental benefits of consumer goods.³ Beyond Pesticides has also sued companies for making misleading statements that their products were environmentally friendly.⁴

19. Beyond Pesticides is statutorily empowered pursuant to D.C. Code Section 28-3905(k)(1)(D) to represent the interests of District of Columbia consumers and to bring this action on their behalf.

20. Because of Beyond Pesticides' long-standing interest in truthful advertising about the environmental impacts of consumer goods and its advocacy to enjoin companies from unfair

¹ *Wide Range of Harmful Effects of Pesticides Documented in Literature Review*, Beyond Pesticides (Apr. 25, 2024), <https://beyondpesticides.org/dailynewsblog/2024/04/wide-range-of-harmful-effects-of-pesticides-documented-in-literature-review/>.

² *What is Beyond Pesticides?*, Beyond Pesticides, <https://www.beyondpesticides.org/about/our-mission> (last visited Aug. 14, 2026).

³ *Critics Charge Sara Lee with Greenwashing To Lure Consumers*, Beyond Pesticides (Feb. 23, 2010), <https://beyondpesticides.org/dailynewsblog/2010/02/critics-charge-sara-lee-with-greenwashing-to-lure-consumers/>

⁴ *Beyond Pesticides Lawsuit Challenges Exxon for Deceptive Claims of Significant Investments in Solving the Climate Crisis, Cites Petrochemical Pesticides*, Beyond Pesticides (May 18, 2020), <https://beyondpesticides.org/dailynewsblog/2020/05/lawsuit-challenges-exxon-for-deceptive-claims-of-significant-investments-in-solving-the-climate-crisis/>

or deceptive trade practices, Beyond Pesticides has a sufficient nexus to the interests of consumers of Driscoll's products to adequately represent these consumers' interest in truthful advertising of environmental benefits. That is, Beyond Pesticides has a sufficient stake in the present matter to pursue it with zeal and concreteness.⁵

21. Plaintiff Organic Consumers Association is a 501(c)(3) nonprofit, public interest organization that is based in Finland, Minnesota, and focuses on food safety, organic agriculture, and genetic engineering issues.

22. Organic Consumers Association's mission is to protect and advocate for consumers' right to safe, healthful food and other consumer products, a just food and farming system, and an environment rich in biodiversity and free of pollutants.

23. Through its work, Organic Consumers Association has a strong interest in truth in advertising and accurate labeling of consumer goods. For example, Organic Consumers Association has sued companies for making misleading statements that their products were sustainable.⁶

24. Organic Consumers Association is statutorily empowered pursuant to D.C. Code Section 28-3905(k)(1)(D) to represent the interests of District of Columbia consumers and to bring this action on their behalf.

25. Because of Organic Consumers Association's interest in truthful advertising about environmental claims and its advocacy to enjoin companies from unfair or deceptive trade practices, Organic Consumers Association has a sufficient nexus to the interests of consumers of Driscoll's products to adequately represent these consumers' interest in truthful advertising of

⁵ See *Ctr. For Inquiry v. Walmart, Inc.*, 283 A.3d 109, 115 (D.C. 2022).

⁶ *Organic Consumers Association Takes Legal Action Against Mission Produce*, Organic Consumers Association (Nov. 7, 2024), <https://organicconsumers.org/organic-consumers-association-takes-legal-action-against-mission-produce/>

environmental benefits. That is, Organic Consumers Association has a sufficient stake in the present matter to pursue it with zeal and concreteness.⁷

26. Plaintiff Toxin Free USA is a 501(c)(3) nonprofit, public interest organization established in 2014 that is based in New Fairfield, Connecticut, and that works to eliminate harmful chemicals from the food system and environment.

27. Toxin Free USA's mission is to harness independent science and agroecological concepts to advocate for clean and healthy food and ecological systems.

28. Through its work, Toxin Free USA has a strong interest in truth in advertising and accurate labeling of consumer goods. For example, Toxin Free USA has sued companies for making misleading statements that their products were sustainable.⁸

29. Toxin Free USA is statutorily empowered pursuant to D.C. Code Section 28-3905(k)(1)(D) to represent the interests of District of Columbia consumers and to bring this action on their behalf.

30. Because of Toxin Free USA's interest in truthful advertising about environmental benefits and its advocacy to enjoin companies from unfair or deceptive trade practices, Toxin Free USA has a sufficient nexus to the interests of consumers of Driscoll's products to adequately represent these consumers' interest in truthful advertising of environmental benefits. That is, Toxin Free USA has a sufficient stake in the present matter to pursue it with zeal and concreteness.⁹

31. Defendant Driscoll's is the largest berry company in the world.¹⁰

⁷ See *Ctr. For Inquiry v. Walmart, Inc.*, 283 A.3d 109, 115 (D.C. 2022).

⁸ *Toxin Free USA Sues Aldi for False Advertising of "Sustainable" Salmon Products*, Toxin free USA (May 25, 2021), <https://toxinfreeusa.org/toxin-free-usa-sues-aldi-for-false-advertising-of-sustainable-salmon-products/#:~:text=WASHINGTON%20DC%2C%20May%2025%2C%202021,and%20other%20chemicals%20are%20used.>

⁹ See *Ctr. For Inquiry v. Walmart, Inc.*, 283 A.3d 109, 115 (D.C. 2022).

¹⁰ Clint Rainey, *Driscoll's Sweetest Batch berries are finally more affordable. Here's why*, Fast Company (March 19, 2024), <https://www.fastcompany.com/91039014/driscolls-most-innovative-companies-2024>; Marianna Kantor, *Smart Predictions for the World's Largest Berry Producer*, Forbes (June 19, 2020),

32. According to Driscoll’s consumer-facing website, Driscoll’s founders began producing strawberries in 1904, and the company now produces, markets, sells, and distributes strawberries, blueberries, blackberries, and raspberries.¹¹

33. Defendant Driscoll’s is headquartered in Watsonville, California, with its principal offices in California.¹²

34. Driscoll’s markets itself and its products throughout the District of Columbia through its website, which is accessible to consumers within the District.

35. Driscoll’s sells its products to consumers at retail locations throughout the District of Columbia, including Giant Food, Harris Teeter, Safeway, Costco, Walmart, Wegmans, and Whole Foods Market.¹³

FACTUAL ALLEGATIONS

I. Driscoll’s represents that its berries are grown outside in a dynamic biological environment and in harmony with the environment.

36. Via Driscoll’s consumer-facing website, Driscoll’s represents itself as a company committed to “growing in harmony with the environment.”¹⁴

37. The same website touts that Driscoll’s “[b]erries aren’t produced in a factory; they’re grown outside in a dynamic biological environment.”¹⁵

38. Driscoll’s also represents that it “grow[s] with harmony between [its] family-owned

<https://www.forbes.com/sites/esri/2020/06/19/smart-predictions-for-the-worlds-largest-berry-producer/>; see Julia Moskin, *Why Are Berries Everywhere, in Every Season?* *Driscoll’s*, New York Times (July 7, 2026), https://www.nytimes.com/2026/07/07/dining/driscolls-berries.html?eafs_enabled=false.

¹¹ *Pursuit of Flavor*, Driscoll’s, <https://www.driscolls.com/about/pursuit-of-flavor> (last visited Aug. 10, 2026).

¹² *Driscoll’s, Inc.*, California Secretary of State, <https://bizfileonline.sos.ca.gov/search/business> (last visited Aug. 10, 2026).

¹³ *Where to Buy*, Driscoll’s, <https://www.driscolls.com/about/where-to-buy> (last visited Aug. 10, 2026).

¹⁴ *Field Plastics*, Driscoll’s, <https://www.driscolls.com/article/field-plastics> (last visited Aug. 10, 2026).

¹⁵ *How We Grow Our Berries*, Driscoll’s, <https://www.driscolls.com/about/our-practices/how-we-grow> (last visited Aug. 10, 2026).

company and the ecosystems that sustain us.”¹⁶

39. Driscoll’s represents that its berries are “good for you and the planet.”¹⁷

II. In reality, Driscoll’s berries are grown in and surrounded by plastic.

40. In reality, Driscoll’s grows many of its berries in containerized production facilities that are covered in plastic, as depicted in the images below.



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¹⁶ *One Family, One Earth*, Driscoll’s, <https://www.driscolls.com/one-family-one-earth> (last visited Aug. 10, 2026).

¹⁷ *How We Grow Our Berries*, *supra* note 15.

¹⁸ *Id.*



Many of Driscoll's organic berries are now planted in pots, not directly in soil. Kelsey McClellan for The New York Times

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41. This type of containerized production uses significant amounts of plastic and, rather than growing the crops straight from the Earth's soil, puts containers for growing on top of layers of plastic.

42. Containerized production is a type of growing where fruit-producing plants are planted in confined plastic pots. To prepare the land for this type of growing system, soil is compacted and plastic is laid down on the newly leveled ground. Rows of plastic pots are laid on top of the plastic-lined ground, and the pots, with their coconut husk substrates, become home to

¹⁹ *Why Are Berries Everywhere, in Every Season? Driscoll's*, *supra* note 10.

Driscoll's prepared berry plants. Hood infrastructure is built over the crops to shield them from extreme weather conditions.

43. Even in its more traditional outdoor growing fields, Driscoll's berry plants are encased in plastic.

44. As a result of Driscoll's plastic use in growing and packaging, its berries are contaminated with harmful microplastics, which are not "good for you."

45. Plaintiffs commissioned testing of Driscoll's blueberries in April of 2024. The lab analyzed 6.2 grams of the blueberries, which revealed 27 microplastic particles of polyethylene and 4 microplastic particles of polycarbonate. Both values are above the minimum detectable amount (MDA), which means that these particles were present without a doubt.

46. Contrary to Driscoll's representations that its berries are grown "in harmony with the environment" and good for the planet, its agricultural practices pollute the environment with macroplastics and microplastics.

47. Contrary to Driscoll's representations that its berries are grown in dynamic outdoor environments, some of Driscoll's berries are grown indoors.

48. Driscoll's is involved in a collaboration with Plenty Unlimited, Inc., a company that uses indoor growing systems that grow crops vertically without soil or sun.²⁰

49. In September 2024, Plenty announced a partnership with Driscoll's in which they are growing indoor, vertically farmed strawberries.²¹

50. J. Miles Reiter, Driscoll's Chairman and CEO, stated, "we believe our proprietary berries, which are focused on flavor, combined with Plenty's technology leadership will create a

²⁰ *Our Produce*, Plenty, <https://www.plenty.ag/product/> (last visited Aug. 10, 2026).

²¹ *Plenty opens world's first farm to grow indoor, vertically farmed berries at scale*, Plenty (Sept. 24, 2024), <https://www.plenty.ag/plenty-opens-worlds-first-farm-to-grow-indoor-vertically-farmed-berries-at-scale/>.

competitive market edge as we expand to more effectively meet the future consumer.”²² The indoor growing environment is reported to “remove the unpredictability of Mother Nature.”²³

III. Driscoll’s portrays itself as a good environmental steward that is committed to sustainability and recycling.

51. Driscoll’s represents that it is “committed to the sustainable management and equitable utilization of water.”²⁴

52. The Driscoll’s website represents to consumers that Driscoll’s is “dedicated to finding sustainable packaging solutions that protect [your] berries while reducing environmental impact.”²⁵

53. On its website, Driscoll’s highlights its “Environmental Stewardship” and tells consumers that the brand is “committed to preserving [the environment] through long-lasting sustainability initiatives.”

54. Driscoll’s also represents that it wants to be “part of a future where resources are managed responsibly, working with the land, not against it.”²⁶

²² *Driscoll’s and Plenty Agree to Grow Strawberries Indoors*, Businesswire (Oct. 12, 2020), <https://www.businesswire.com/news/home/20201012005115/en>.

²³ *Driscoll’s and Plenty Agree to Grow Strawberries Indoors*, Businesswire (Oct. 12, 2020), <https://www.businesswire.com/news/home/20201012005115/en>.

²⁴ *Water Stewardship*, Driscoll’s, <https://www.driscolls.com/about/sustainability/water-stewardship> (last visited Aug. 10, 2026).

²⁵ *Better Berries Deserve Better Packaging*, Driscoll’s, <https://www.driscolls.com/about/sustainability/packaging> (last visited Aug. 10, 2026).

²⁶ *One Family, One Earth*, Driscoll’s, <https://www.driscolls.com/one-family-one-earth#environmental-stewardship> (last visited Aug. 10, 2026).

Environmental Stewardship

We want to be part of a future where resources are managed responsibly, working with the land, not against it. We support innovations and sustainable practices that protect the long-term viability of agriculture and the berries we all love.

55. Throughout its website, Driscoll's touts its "sustainability" and uses images such as the one depicted below, to show rows of plants growing outside in the soil.



56. In another facet of its sustainability representations, Driscoll's advertises that its berries "deserve better packaging" as depicted in the image below.



57. Driscoll's uses PET for its plastic clamshell containers.²⁸

²⁷ *How We Grow Our Berries*, *supra* note 15.

²⁸ *Frequently Asked Questions, Are Driscoll's Packages Recyclable*, Driscoll's, <https://www.driscolls.com/about/faq> (last visited Aug. 10, 2026).

58. It sells about four billion clamshells of berries each year.²⁹

59. Driscoll's reports that it is working in partnership with the Association of Plastic Recyclers and Material Recovery Facilities (MRFs) to achieve a goal of creating more sustainable packaging, with the ultimate goal being to bring its clamshell packaging back into the supply chain to make new ones.³⁰

60. On its Instagram account, Driscoll's posted the below image and caption, which seeks to promote the company as a recycling advocate, touting practices such as "closed-loop recycling," reducing CO₂ emissions, and incorporating post-consumer plastic into their packaging.



61. The website further states that Driscoll's is "looking into technology that improves the recycling process to ensure every part of the clamshell can be reused" and "exploring promising technology like bioplastics made from plant materials." Driscoll's then assures consumers that "[t]hese types of containers would be both compostable and biodegradable."³²

62. Driscoll's reports that "we've got to work together to sustain" the planet,

²⁹ *Why Are Berries Everywhere, in Every Season?* Driscoll's, *supra* note 10.

³⁰ *Id.*

³¹ @driscollsberry, Instagram (Mar. 18, 2024), <https://www.instagram.com/driscollsberry/p/C4qV4ooOeM-/>.

³² *Better Berries Deserve Better Packaging*, Driscoll's, <https://www.driscolls.com/about/sustainability/packaging> (last visited Aug. 10, 2026).

encouraging consumers to contact their local recyclers to find out if they can recycle Driscoll's clamshells in their communities.³³

63. Regarding its use of field plastics, Driscoll's represents that it is focused on achieving "zero [field] plastics going to landfill in priority grower regions by 2025." Driscoll's indicates that it launched its "sustainable field plastics work back in 2019" with the goal of achieving "100% recycling of field plastics with a viable recycling market in all major producing regions by 2021."³⁴

64. Driscoll's has since updated its goal for 100% recycling of field plastics, now targeting 2030.

65. Driscoll's also states that it continues "research and development efforts . . . to assess alternative materials to plastic that do not compromise product quality or safety."³⁵

66. In 2021, Driscoll's joined The New Plastics Economy Global Commitment and pledged to prioritize sustainable packaging solutions. Driscoll's Chairman and CEO, J. Miles Reiter, stated that "signing the global commitment elevates [Driscoll's] existing work by holding [Driscoll's] to a higher standard, and serves as a commitment to transparency as well as annual reporting to accelerate the transition to a circular economy for plastic."³⁶

67. Being part of this initiative requires all signatories to commit to eliminate problematic or unnecessary packaging, move toward reuse models, ensure 100% of plastic packaging is reusable, recyclable, or compostable, and set an ambitious recycled content target to meet by 2025.

³³ *Id.*

³⁴ *Field Plastics*, *supra* note 14.

³⁵ *Id.*

³⁶ *Driscoll's Becomes First U.S.-Based Produce Company to Sign the New Plastics Economy Global Commitment*, PerishableNews.com (Apr. 1, 2021), <https://www.perishablenews.com/produce/driscolls-becomes-first-u-s-based-produce-company-to-sign-the-new-plastics-economy-global-commitment/>.

68. Driscoll's 2025 target was to reduce virgin plastic use by five percent from its 2020 usage, but it has not reported its progress on this goal.³⁷

IV. The reality of Driscoll's berry productions methods involves unsustainable uses of both water and plastics.

A. Driscoll's water usage is not sustainable.

69. For water usage to be sustainable, water must not be extracted faster than it can be replenished, and water use must not harm either the local or surrounding communities' present and future water needs.

70. Driscoll's supplier farms, many of which are located along the California coast where rainfall is limited, must pump water from underground, which leads to overdrafts of local aquifers.³⁸

71. Driscoll's supplier farms have used pesticides and chemicals that enter the local water supply, harming local communities' need for healthy, uncontaminated water.³⁹

72. The U.S. Environmental Protection Agency has classified the waterways surrounding Driscoll's as impaired, "largely because of the presence of bacteria and toxic chemicals"; the farmworkers and their families bear the brunt of this pollution.⁴⁰

73. Reports found that Driscoll's dug wells in Michoacán, Mexico, to irrigate its supplier farms because the surface water in the area is limited and contaminated; as a result, Driscoll's has deprived local communities of important water resources.⁴¹

³⁷ *Id.*

³⁸ Austin Frerick, *Do you Know Where Your Strawberries Come From?*, The New Republic (Mar. 28, 2024), <https://newrepublic.com/article/180146/strawberries-driscolls-water-genetic-pesticide#:~:text=The%20U.S.%20Environmental%20Protection%20Agency,the%20brunt%20of%20this%20pollution.>

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Don't Eat Driscoll's Plasticberries, Organic Consumers Association*, <https://advocacy.organicconsumers.org/page/68349/action/1> (last visited Aug. 10, 2026).

74. None of these instances of water usage meet a reasonable consumer's understanding of the word sustainable.

B. Driscoll's plastic packaging and field plastics are not sustainable and not recycled.

1) Driscoll's plastics use does not meet the dictionary definition of sustainable.

75. The dictionary definition of sustainable is "capable of being sustained."

76. Plastic production is not sustainable whether it is made from fossil-fuel-derived chemicals or recycled plastic materials.

77. Fossil fuels are a finite, non-renewable resource because they take millions of years to form. Because we are using them at a rate much faster than they can be replenished, their use is inherently not sustainable.

78. The process of extracting, refining, and manufacturing plastics from fossil fuels also is highly energy-intensive and releases substantial carbon emissions, which contribute to climate change.

79. Likewise, even if all plastic went back into making more plastic (which is far from the case), at some point, used and recycled plastics degrade to such an extent that they can no longer be recycled, and they go to a landfill. Thus, recycling plastic is not sustainable.

80. In fact, Joe Barsi, president of California Giant Berry Farms, acknowledged in 2021 that the "plastic that is used in berry production" is "hard to recycle"⁴²

2) Driscoll's plastics use is not sustainable in the way that many consumers think of the word sustainable.

81. Consumers associate "sustainable" with environmentally friendly. For example,

⁴² *Berry Growers Introduce Innovation Challenge to Solve for Agricultural Plastic Waste*, Urban Ag News (Oct. 7, 2021), <https://urbanagnews.com/blog/news/berry-growers-introduce-innovation-challenge-to-solve-for-agricultural-plastic-waste/>

according to analysis by Deloitte, consumers equate “sustainable” with “best option for the environment” and “eco-friendly.”⁴³

82. Driscoll’s use of plastic clamshells, plastic growing pots, plastic tarps, and field plastics is not the best option for the environment or eco-friendly.

83. In fact, plastics have created a pollution crisis that harms humans and wildlife.⁴⁴

84. Field plastics result in the formation of macroplastics that “damage soil structure and stunt plant development” as well as microplastics that pollute the environment, harming wildlife and humans.⁴⁵

85. It takes centuries for PET to decompose in a landfill.

86. Much of the plastic packaging used for fresh produce, like Driscoll’s clamshells, ends up in the oceans where it pollutes the environment and harms ecosystems.

3) Driscoll’s plastics don’t get recycled, and investing in new types of plastic isn’t the solution.

87. Recycling plastic is not a solution to the global plastic pollution problem, though Driscoll’s representations conjure this impression among consumers.

88. A significant portion of recyclable materials—regardless of whether users dispose of them correctly—end up in landfills or the natural environment.⁴⁶

89. One 2021 report “documented a recycling rate of 5 to 6% for post-consumer plastic

⁴³ *Unpacking the Sustainability Dilemma: How Consumer Values Become Choice*. Deloitte, <https://www.deloitte.com/us/en/Industries/retail/perspectives/deloitte-adcouncil-sustainable-products-consumer-buying-trends.html>

⁴⁴ Renée Sharp and Avinash Kar, *What You Need to Know About the Plastic Crisis*, NRDC (Apr. 9, 2024), <https://www.nrdc.org/bio/avinash-kar/what-you-need-know-about-plastic-crisis>

⁴⁵ Celeste Meiffren-Swango, *Millions of pounds of single-use plastic covers U.S. crops*, Environment America (June 26, 2025), <https://environmentamerica.org/articles/millions-of-pounds-of-single-use-plastic-covers-u-s-crops/>

⁴⁶ Livia Albeck-Ripka, *Your Recycling Gets Recycled, Right? Maybe, or Maybe Not*, The New York Times (May 29, 2018), <https://www.nytimes.com/2018/05/29/climate/recycling-landfills-plastic-papers.html>.

waste in the U.S.’’⁴⁷

90. Bioplastics are also not the answer to the plastic pollution crisis. Bioplastics do not break down in normal environments and are not compostable. All bioplastics act like conventional plastics—breaking up into small particles that pollute the Earth and our bodies.⁴⁸

91. Driscoll’s, like other companies, promotes plastic recycling as a solution to the plastics pollution crisis, when, in reality, the solution requires reducing plastic production and use.

92. In marketing its product packaging as “recyclable” and touting the ways in which it hopes to recycle the massive amounts of field plastics used in its berry production, Driscoll’s fails to acknowledge these complexities and how they affect actual recycling rates, and in turn, the sustainability of Driscoll’s products.

4) Driscoll’s isn’t recycling much of its field plastics and likely will never come close to 100% recycling of field plastics.

93. Field plastics, also known as plastic mulch, are rarely recycled because recycling of plastic mulch is generally only possible if contaminants make up less than 5% of the weight of plastic mulch. After the growing season, contaminants make up significantly more than 5% of the weight of plastic mulch.⁴⁹

94. Driscoll’s has been trying for at least seven years (since 2019) to recycle 100% of its field plastics with little progress to show for it.

95. Driscoll’s keeps pushing the completion date of 100% recycling of field plastics because it keeps failing to achieve its goal; it failed in 2021 and again in 2025. It will fail again in 2030.

⁴⁷ Jan Dell, et al., *New Report Reveals that U.S. Plastics Recycling Rate Has Fallen to 5%-6%*, Beyond Plastics (May 4, 2022), <https://www.beyondplastics.org/press-releases/the-real-truth-about-plastics-recycling>.

⁴⁸ *Bioplastics are Not the Solution to Plastic Pollution*, Plastic Pollution Coalition (Aug. 3, 2023), <https://www.plasticpollutioncoalition.org/blog/2023/8/3/bioplastics-are-not-the-solution-to-plastic-pollution>

⁴⁹ *Millions of pounds of single-use plastic covers U.S. crops*, *supra* note 45.

96. The challenge of recycling field plastics is so difficult that Driscoll’s projections of when it will achieve success are wildly misleading. Saying it can achieve 100% recycling of field plastics in five or even 10 years is like saying that thousands of people will be happily and successfully living on the moon by the end of 2028. Goals like these are so disconnected from what’s realistic and technically achievable that stating them is inherently misleading.

V. Consumers care about sustainability, recyclability, and growing conditions when deciding whether to purchase food.

97. Defendant’s water usage, packaging, and growing methods are facts that consumers would consider important in deciding whether to purchase Driscoll’s berries.

98. Most Americans consider how food is grown when making decisions about food and beverages.⁵⁰

99. Further, consumers’ environmental concerns are directly related to agricultural production methods.⁵¹

100. Consumers seeking “sustainably” produced goods are often willing to pay more for these products.⁵²

101. Consumers assess producers’ sustainability practices through production methods and recycling, eco-friendly packaging, and making a positive impact on nature and water

⁵⁰ 2024 IFIC Spotlight Survey: Public Perceptions of Pesticides & Produce Consumption, International Food Information Council (April 2024), https://foodinsight.org/wp-content/uploads/2024/04/2024-IFIC-Spotlight-Survey_Pesticides-Produce-Consumption.pdf.

⁵¹ Sina Nitzko, *Consumer evaluation of food from pesticide-free agriculture in relation to conventional and organic products*, Farming System (Jul. 8, 2024), https://www.sciencedirect.com/science/article/pii/S294991192400042X?ref=pdf_download&fr=RR-2&rr=8af1b9c15a0319fb.

⁵² *Consumers willing to pay 9% sustainability premium, even as cost-of-living and inflationary concerns weigh: PwC 2024 Voice of the Consumer Survey*, PwC (May 15, 2024), [https://www.pwc.com/gx/en/news-room/press-releases/2024/pwc-2024-voice-of-consumer-survey.html#:~:text=More%20than%20four%2Dfifths%20\(80,sustainable%20produced%20or%20sourced%20goods](https://www.pwc.com/gx/en/news-room/press-releases/2024/pwc-2024-voice-of-consumer-survey.html#:~:text=More%20than%20four%2Dfifths%20(80,sustainable%20produced%20or%20sourced%20goods.). See also Jordan Bar Am et al., *Consumers care about sustainability—and back it up with their wallets*, McKinsey & Company (Feb. 6, 2023), <https://www.mckinsey.com/industries/consumer-packaged-goods/our-insights/consumers-care-about-sustainability-and-back-it-up-with-their-wallets>

conservation.⁵³

102. A survey of 9,000 of consumers across North America, South America, and Europe published in 2023 found that the majority of consumers look for information about recyclability or sustainability on product packaging.⁵⁴ The same survey also found that 79% of consumers look for products in sustainable packaging, and 82% are likely to purchase a product based on recyclable packaging claims.⁵⁵

103. A 2023 McKinsey survey of United States consumers found that “43[%] of consumers ... say environmental impact is an extremely or very important packaging characteristic when making purchasing decisions.”⁵⁶

104. The same McKinsey survey found that most consumers are willing to pay more for sustainable packaging, that 4% to 7% of consumers are willing to pay a premium well above 10%, and yet “[m]ost consumers do not have a strong understanding of which packaging types are more sustainable.”⁵⁷

105. Reasonable consumers lack the information and scientific knowledge necessary to ascertain the true source, quality, and nature of production methods used in Driscoll’s products.

106. Reasonable consumers rely on Driscoll’s to not make misleading statements about its water usage, packaging, and growing methods.

⁵³ *Id.*

⁵⁴ *Buying Green Report*, Trivium Packaging at 3, 9, 15 (2023), <https://www.triviumpackaging.com/media/pe5hfxsp/2023buyinggreenreport.pdf>.

⁵⁵ *Buying Green Report*, Trivium Packaging at 3, 9, 15 (2023), <https://www.triviumpackaging.com/media/pe5hfxsp/2023buyinggreenreport.pdf>.

⁵⁶ David Feber et al., *Sustainability in Packaging: US Survey Insights* (Apr. 26, 2023), <https://www.mckinsey.com/industries/packaging-and-paper/our-insights/sustainability-in-packaging-us-survey-insights>.

⁵⁷ David Feber et al., *Sustainability in Packaging: US Survey Insights* (Apr. 26, 2023), <https://www.mckinsey.com/industries/packaging-and-paper/our-insights/sustainability-in-packaging-us-survey-insights>.

CAUSE OF ACTION

District of Columbia Consumer Protection Procedures Act

107. Under the CPPA, it is an unfair or deceptive trade practice to “misrepresent as to a material fact which has a tendency to mislead” D.C. Code § 28-3904(e).

108. Under the CPPA, it is also unfair or deceptive trade practice to “fail to state a material fact if such failure tends to mislead” D.C. Code § 28-3904(f).

109. The CPPA also prohibits “represent[ing] that goods . . . have . . . characteristics . . . [or] benefits . . . that they do not have” D.C. Code § 28-3904(a).

110. Driscoll’s claims that its berries are grown outside in a dynamic biological environment in harmony with nature and ecosystems violate D.C. Code §§ 28-3904(a) and (e) because they represent that the goods have characteristics or benefits that they do not have and misrepresent material facts about the berries’ growing conditions.

111. A reasonable consumer seeing Driscoll’s advertising would expect its berries to be grown sustainably in the soil, exposed to the dynamic conditions of nature — not in plastic pots on the ground covered with plastic sheets under plastic hoods.⁵⁸

112. For these reasons, Defendant’s statements regarding the growing conditions of its berries have a tendency to mislead as to material facts and represent that the goods have characteristics or benefits that they do not have.

113. Driscoll’s marketing violates D.C. Code § 28-3904(f) because it fails to state material facts and those failures have a tendency to mislead.

114. Defendant’s advertising fails to state multiple material facts, hiding from consumers that its growing practices use an enormous amount of plastic, including the plastic pots

⁵⁸ In examining Driscoll’s statements, we consider how they would be viewed and understood by a reasonable consumer. *See Ctr. For Inquiry v. Walmart, Inc.*, 283 A.3d 109, 120 (D.C. 2022).

in which many of Defendant's berries are grown, the plastic hoods with which many plants are covered, and extensive field plastics covering the soil, which results in plastic contaminants in the berries and the environment.

115. Defendant also fails to disclose to consumers the material facts that some of Defendant's berries aren't even grown outside but instead are grown in an indoor vertical farm.

116. Because none of these material facts are stated by Defendant or stated prominently, reasonable consumers develop a mistaken understanding of Driscoll's growing conditions.

117. Driscoll's statements that its berries are good for you and the planet are also misleading because these statements omit the material fact of harmful microplastics in the berries themselves as well as in the agricultural environment in which they are grown.

118. Under the CPPA, a fact is material if a reasonable person would consider it important in deciding whether to engage in the transaction.

119. The growing conditions of Defendant's berries are material because a reasonable person would consider them important in deciding whether to purchase the berries for the reasons discussed *supra*, § V.

120. Also, Driscoll's statements that it is committed to the sustainable management and equitable utilization of water violate D.C. Code § 28-3904(e) because they mislead on the material fact of sustainability.

121. Even if it's literally true that Defendant holds the commitment to sustainability, a reasonable consumer would interpret "a commitment to sustainability" as more than just a corporate value or the CEO's mindset. Commitment to sustainability implies that the company is taking actions that promote and achieve sustainability.

122. As discussed *supra*, § IV, Defendant's actions harm the environment, rather than protecting it. Withdrawing excessive amounts of water without replenishment, impairing waterways, and using huge amounts of plastic do not sustain a healthy environment.

123. Likewise, Defendant's claims regarding achieving sustainable packaging mislead as to the material fact of recycling. Most of Driscoll's clamshells are not being recycled, and even for the few that are recycled, they likely are recycled only once before going to a landfill. Plastic use is never sustainable because plastic comes from the finite resource of fossil fuels and the entire lifecycle of plastics causes pollution.

124. Similarly, Defendant's statements about actions it is taking — such as looking into technology to improve recycling — or goals it has, such as all field plastics being recycled by 2030, mislead as to the material fact of feasibility.

125. These aspirational statements imply to a reasonable consumer that Driscoll's good intentions and limited actions are somehow going to solve the intractable problem that plastic can't be effectively recycled. But Defendant's limited actions and goal won't change anything. Even newly developed, advanced materials like vitrimers can't be recycled indefinitely without degradation.

126. The sustainability of Defendant's water usage, packaging, and growing methods are material because a reasonable person would consider them important in deciding whether to purchase the berries. *See supra*, § V.

127. Driscoll's advertising about sustainability and recycling also violates D.C. Code § 28-3904(f) because it fails to state material facts and those failures have a tendency to mislead.

128. Defendant fails to state several material facts relating to its water usage, plastic packaging, and field plastics, including that: (a) Driscoll's hasn't replenished the water it uses and

has impaired waterways through its actions; (b) Driscoll's plastic packaging most likely won't get recycled, and even when some part of it is recycled, it ultimately ends up in a landfill; and (c) it's highly unlikely that Driscoll's will ever achieve 100% recycling of field plastics.

129. Because none of these material facts are stated by Defendant, reasonable consumers develop the mistaken impression that Driscoll's is using water sustainably, its plastic clamshells can be recycled, and its field plastics are a temporary problem that the company will figure out by 2030. None of these things are true.

130. These omissions are material because sustainability and the use of recyclable materials in packaging and agriculture are important to consumers in making purchase decisions. *See supra*, § V.

131. In claiming that its water usage and packaging is sustainable and that it is a mere four years away from recycling field plastics, Defendant also violates D.C. Code § 28-3904(a) because it represents that its goods have characteristics and benefits that they do not have.

132. Under D.C. case law, the environmental impact of how a company creates its products, and what becomes of the products, are qualities of the product itself. *Earth Island Inst. v. Coca-Cola Co.*, 321 A.3d 654 (D.C. 2024).

133. For this reason, the environmental impact of defendant's water usage, plastic packaging, and field plastics — as well as what happens to the plastic clamshells and field plastics — are qualities of Defendant's products.

134. Any unfair or deceptive claims about these qualities are therefore actionable.

135. Defendant's products simply do not have the characteristics or benefits of being produced with sustainable water usage, growing practices, or packaging. Nor will the company's efforts be adequate to achieve 100% recycling of field plastics.

JURY DEMAND

136. Plaintiffs hereby demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Beyond Pesticides, Organic Consumers Association, and Toxin Free USA respectfully pray for judgment against Defendant Driscoll's and request the following relief:

- A. A declaration that Driscoll's marketing is in violation of the CPPA;
- B. An order enjoining Driscoll's conduct found to be in violation of the CPPA;
- C. Plaintiffs' costs and disbursements, including reasonable attorneys' fees and expert fees, and prejudgment interest at the maximum rate allowable by law; and
- D. Such other and further relief as the Court may deem just and proper.

DATED: August 14, 2026

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