

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

BEYOND PESTICIDES, 701 E Street SE, Suite 200, Washington, DC 20003, Plaintiff, v. THE SCOTTS MIRACLE-GRO COMPANY, 14111 Scottslawn Road, Marysville, Ohio 43041, Defendant.	COMPLAINT 2024-CAB-006782 <u>DEMAND FOR JURY TRIAL</u>
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PREAMBLE

Plaintiff Beyond Pesticides brings this action against Defendant The Scotts Miracle-Gro Company regarding the false and deceptive marketing and sale of EcoScraps Fertilizers.¹ Defendant represents to District of Columbia consumers that the Products are environmentally friendly. The Products are not environmentally friendly because they contain per- and polyfluoroalkyl substances (“PFAS”), a group of synthetic chemicals that are extremely resistant to degradation, persist indefinitely in the environment, bioaccumulate in blood and body tissues, and can be harmful to humans and the environment, even at very low levels. This Complaint is on behalf of the general public of the District of Columbia, in the interest of consumers. This is not a class action, and no class certification will be sought. Plaintiff alleges the following based upon personal knowledge, information, belief, and the investigation of Counsel:

¹Hereinafter referred to as the “Products.” Plaintiff alleges that any of The Scotts Miracle-Gro Company’s products that contain PFAS and are represented as “eco friendly” or with any environmental sustainability language are within the scope of this Complaint. Plaintiff reserves right to add future Products as a result of further discovery.

INTRODUCTION

1. This is a consumer-protection case alleging deceptive marketing representations about fertilizer products. The case is brought by Beyond Pesticides (“Beyond Pesticides” or “Plaintiff”), which is a nonprofit, public interest organization dedicated to consumer protection and education. Plaintiff seeks to end to the deceptive marketing and advertising at issue. Plaintiff does not seek money damages.

2. Defendant The Scotts Miracle-Gro Company (“Scotts” or “Defendant”) manufactures and sells lawn and garden fertilizer products, both in stores and through online retailers, including to consumers in the District of Columbia.

3. Scotts markets these Products as “eco friendly” and “sustainable.”

4. In reality, the Products contain toxic chemicals that are harmful to the environment.

5. Plaintiff’s testing of the Products revealed the presence of PFAS.

6. PFAS are a group of synthetic chemicals that are used in a wide variety of consumer products and for industrial purposes.

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

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

² See Abrahm Lustgarten et al., *Suppressed Study: The EPA Underestimated Dangers of Widespread Chemicals*, ProPublica (June 20, 2018), <https://www.propublica.org/article/suppressed-study-the-epa-underestimated-dangers-of-widespread-chemicals>.

³ Nat’l Inst. of Env’t Health Sciences (“NIEHS”), *Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)*, Nat’l Insts. of Health U.S. Dept. of Health and Human Servs., <https://www.niehs.nih.gov/health/topics/agents/pfc/index.cfm> (last visited Oct. 11, 2023); Francisca Pérez et al., *Accumulation of Perfluoroalkyl Substances in Human Tissues*, 59 Env’t Int’l 354 (2013), <https://doi.org/10.1016/j.envint.2013.06.004>.

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

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

11. The Biden-Harris Administration, underscoring the gravity of the PFAS threat, announced accelerated efforts to protect Americans from PFAS on the basis that these substances can cause “severe health problems” and persist in the environment once released, “posing a serious threat across rural, suburban, and urban areas.”⁶

12. The source of the PFAS in the Products is sewage sludge.

13. Sewage sludge—also called “biosolids”—is the material removed from wastewater by treatment plants.

14. PFAS chemicals are commonly found in industrial wastewater, municipal runoff, and water from landfill leachate, which flow to wastewater treatment plants. The leachate, in particular, can contain high concentrations of PFAS.⁷

15. The chemicals are not removed in the wastewater treatment process. Instead, PFAS chemicals remain in the sewage sludge that is separated from the wastewater in the treatment process.⁸

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

⁵ Elicia Mayuri Cousins et al., *Risky Business? Manufacturer and Retailer Action to Remove Per- and Polyfluorinated Chemicals from Consumer Products*, NEW SOLUTIONS: A J. of Env't & Occupational Health Policy 29(2), 242–65 (2019), <https://doi.org/10.1177/1048291119852674>.

⁶ *FACT SHEET: Biden-Harris Administration Launches Plan to Combat PFAS Pollution*, The White House (Oct. 18, 2021), <https://bit.ly/3DZvZba>; *see also FACT SHEET: Biden-Harris Administration Combatting PFAS Pollution to Safeguard Clean Drinking Water for All Americans*, The White House (June 15, 2022), <https://bit.ly/3Hf4Vt0>.

⁷ Montana PBS Reports: Impact, *Special Investigation: Dangerous Chemicals in Compost*, PBS (Dec. 14, 2023) <https://www.pbs.org/video/206-special-investigation-dangerous-chemicals-in-compost-jchxop/>.

⁸ Ecology Center and Sierra Club, *Sludge in the Garden: Toxic PFAS in Home Fertilizers Made From Sewage Sludge* (May 25, 2021), <https://www.sierraclub.org/sites/default/files/PFA-Garden-Sludge-Report.pdf>.

16. Scotts then turns this PFAS-contaminated sewage sludge into fertilizer that is bagged and sold to consumers for use on their lawns and gardens.⁹

17. Defendant's representations that the Products are environmentally friendly mislead D.C. consumers into believing that the Products are *not* made with environmentally damaging chemicals like PFAS, when in fact, the Products *are* made with such chemicals. Thus, Defendant's marketing is false and misleading to D.C. consumers.

STATUTORY FRAMEWORK

18. This action is brought under the District of Columbia Consumer Protection Procedures Act ("CPPA"), D.C. Code §§ 28-3901–13.

19. The CPPA makes it a violation for "any person" to, *inter alia*:

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

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

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

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

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

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

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

20. While the CPPA enumerates a number of specific unlawful trade practices, *see* D.C. Code § 28-3904, the enumerated list is not exhaustive. A main purpose of the

⁹ See, e.g., *Ecocraps Starter® + Slow-Release Fertilizer*, Scotts, <https://scotts.com/en-us/shop/fertilizers/ecocraps-starter-slow-release-fertilizer/22322.html> (last visited Oct. 11, 2024) ("made with recycled materials that would otherwise end up in a waste system.")

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

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

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

23. Plaintiff in this case is a nonprofit, public interest organization that is statutorily empowered pursuant to D.C. Code Section 28-3905(k)(1)(C) & (D) to represent the interests of District of Columbia consumers.

24. Because Plaintiff is a public interest organization, it may act on behalf of the general public and bring any action that an individual consumer would be entitled to bring:

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

Id. § 28-3905(k)(1)(D)(i). Subparagraph (A) provides: “A consumer may bring an action seeking relief from the use of a trade practice in violation of a law of the District.”

25. Because Plaintiff brings this action seeking relief from Defendant’s trade practices that violate the CPPA, Plaintiff has standing.

26. A public interest organization may act on behalf of the interests of consumers, *i.e.*, the general public of the District of Columbia, so long as the organization has “sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” *Id.* § 28-3905(k)(1)(D)(ii). As set forth in this Complaint, Beyond Pesticides is an organization dedicated to consumer advocacy and has previously represented consumers in similar actions under the CPPA. Plaintiff has a sufficient nexus to D.C. consumers to adequately represent their interests.

27. Alternatively, Beyond Pesticides is a nonprofit organization that has facilitated testing of the Products in order to test or evaluate their qualities, and therefore, has standing under the CPPA to act on behalf of itself and the general public and bring an action as a “tester” organization:

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

Id. § 28-3905(k)(1)(C).

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

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

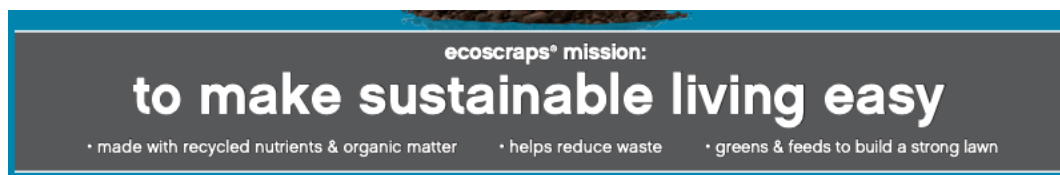
FACT ALLEGATIONS

I. Defendant Represents That the Products Are Eco-Friendly.

30. On the packaging of the Products, Defendant represents that the Products are “eco friendly” and a sustainable choice for consumers as shown in the representative images below:



31. The back label of the Product also says that Defendant’s mission is “to make sustainable living easy.”



32. In addition, on the Home Depot website, consumers have asked questions regarding the safeness of the Product regarding nature. Defendant's answer emphasizes that the Products are "[e]co friendly."¹⁰

Is this safe for wild birds-sparrows, mourning doves, crows?

By , Feb 29, 2024

1 Answer | [Answer This Question](#)

Ecscraps Slow Release Fertilizer is made from recycled nutrients and organic matter that are Eco friendly. Never apply any fertilizer directly to an animals food source.

By [Scotts Hawthorne Consumer Services](#) | Jun 22, 2024

II. The Products Are Not "Sustainable" Nor "Eco Friendly" Because They Contain PFAS.

33. Contrary to Defendant's representations, the Products are not eco-friendly or sustainable because they contain synthetic PFAS chemicals, which are hazardous to the environment.

34. In June 2024, Plaintiff commissioned testing of Defendant's Product. The laboratory analyzed a sample of Defendant's Product for 40 PFAS compounds. It found 19 PFAS compounds in the Product with a total PFAS concentration of 116 parts per billion (ppb).

35. Plaintiff's testing was consistent with earlier testing of the Products commissioned by the Ecology Center and Sierra Club, which found PFAS chemicals in multiple household fertilizers made from sewage sludge, including Defendant's Products.¹¹

¹⁰ *Slow-Release Fertilizer 45 lb., 2,500 sq. ft., Made with Recycled Nutrients and Organic Matter*, Home Depot, <https://www.homedepot.com/p/EcoScraps-Slow-Release-Fertilizer-45-lb-2-500-sq-ft-Made-with-Recycled-Nutrients-and-Organic-Matter-22311-1/311371457> (last visited Oct. 11, 2024.)

¹¹ *Sludge in the Garden*, *supra* note 8.

36. In the Ecology Center and Sierra Club’s testing, the Products were found to contain long-chain PFAS chemicals perfluorooctanoic acid (“PFOA”) and perfluorooctanesulfonic acid (“PFOS”) at concentrations of 1.2 ppb for PFOA and 16.9 ppb for PFOS.¹²

37. Plaintiff’s testing of the Products, as well as that commissioned by the Ecology Center and Sierra Club, also found PFAS precursors that degrade in the environment to form PFAS.

38. PFAS are known as “forever chemicals” because their carbon-fluorine bonds are extremely strong and not appreciably degraded under environmental conditions. The continued use of PFAS is, by the nature of these chemicals, unsustainable, because it will necessarily lead to a greater concentration of PFAS in the environment.¹³

39. The United States Environmental Protection Agency (“EPA”) recently designated PFOA and PFOS as hazardous substances under section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act.¹⁴ This designation was based on EPA’s finding that PFOA and PFOS “may present substantial danger to public health or welfare or the environment.”¹⁵

40. Due to concerns about PFAS contamination of the environment, in 2022, the State of Maine banned the sale and use of fertilizers made from sewage sludge.¹⁶

¹² *Id.*

¹³ Zhanyun Wang et al., *A Never-Ending Story of Per- and Polyfluoroalkyl Substances (PFASs)?*, 51 *Env’t Sci. Technol.* 2508, 2508 (2017), <https://doi.org/10.1021/acs.est.6b04806>.

¹⁴ 89 Fed. Reg. 39124 (May 8, 2024).

¹⁵ *Id.* at 39125.

¹⁶ Maine Public Law 2021, Chapter 641, H.P. 1417 - L.D. 1911 (“An Act To Prevent the Further Contamination of the Soils and Waters of the State with So-called Forever Chemicals”).

41. Additionally, a recent study discovered that when different PFAS compounds are mixed together, “[t]he chemicals act[] together to make the entire mixture toxic.”¹⁷

42. That same study also found that PFOA and PFOS specifically contribute a significant amount to a mixture’s cytotoxicity.¹⁸

43. Coincidentally, the researchers behind that study also “analyzed the toxicity of the extracts from real biosolid samples collected from a municipal wastewater treatment plant” and “observed” “very high toxicities.”¹⁹

44. Here, a mixture of PFAS compounds were found in the fertilizer Product, which is made from biosolids.

45. By using PFAS-contaminated sewer sludge to make its fertilizers, Defendant causes further environmental pollution as consumers unknowingly spread these dangerous chemicals on their yards.

III. Defendant’s Representations Mislead Reasonable Consumers.

46. Reasonable consumers encountering Defendant’s representations emphasizing that the Products are “eco friendly” and “sustainable” do not expect the Products to contain environmentally damaging, unsustainable chemicals.

47. Reasonable consumers would consider PFAS to be harmful to the environment.

48. Scotts misleads D.C. consumers by explicitly representing the Products as “eco friendly” and “sustainable” when they contain PFAS chemicals.

¹⁷ Tom Dinki, *Study finds forever chemicals are more toxic as mixtures*, Uni. of Buffalo (Oct. 4, 2024), <https://www.buffalo.edu/grad/news.host.html/content/shared/university/news/ub-reporter-articles/stories/2024/10/aga-forever-chemicals-toxicity.detail.html>.

¹⁸ *Id.*

¹⁹ *Id.*

49. Additionally, Defendant's omission of the material fact that its Products contain PFAS, which pose risks to human health and the environment, is misleading to reasonable D.C. consumers.

50. Thus, Defendant's conduct in marketing the Products deceives and/or is likely to deceive the public. D.C. consumers have been, and continue to be, deceived into believing that the Products are beneficial for the environment and sustainable when in fact the Products contain "forever chemicals" known to be harmful to the environment.

51. D.C. consumers cannot discover the true nature of the Products from reading Defendant's labels or marketing materials. Ordinary consumers do not have the ability to test fertilizers for PFAS, or sufficient knowledge regarding the risks posed by PFAS.

52. Scotts is deceptively and misleadingly concealing material facts about the Products.

53. Scotts knows what representations it makes in marketing the Products. Scotts also knows how the Products are sourced and produced. Scotts thus knew, or should have known, the facts demonstrating that the Products are falsely represented to D.C. consumers.²⁰

54. In making the false, misleading, and deceptive representations and omissions at issue, Scotts also knew and intended that consumers would choose to buy, and would pay more for, products represented to be "eco friendly" and sustainable, furthering Defendant's private interest of increasing sales of the Products and decreasing the sales of its competitors' fertilizer products that are truthfully marketed.

55. D.C. Consumers are at risk of real, immediate, and ongoing harm if the Products continue to be sold with the misleading representations.

²⁰ Defendant should have known that PFAS were in its Products at least since May 2021 when the Ecology Center and Sierra Club's *Sludge in the Garden* report was released. See *Sludge in the Garden*, *supra* note 8.

IV. Defendant's Representations Are Material to Consumers.

56. Consumers care about whether or not the products they purchase contain unsafe, environmentally hazardous chemicals.

57. One study found that “93% of voters agree and 62% strongly agree that companies should do a better job of removing harmful chemicals from consumer products.”²¹

58. In a survey of more than 1000 consumers, nearly all participants (98%) indicated they were interested in knowing about the presence of harmful chemicals in everyday products.²²

59. Also, “68% [of Americans] would pay more for sustainable products.”²³

60. In a 2024 survey by PricewaterhouseCoopers, more than 80% of consumers said they are willing to pay more for sustainably produced or sourced goods.²⁴

61. More specifically, in a survey of home gardeners, respondents strongly agreed that we have a responsibility to steward the environment for future generations and that home gardeners can affect the environment.²⁵

62. Finally, as consumer awareness of PFAS has increased, so has concern about these chemicals. A July 2023 survey found that 53% of consumers are “very” or “somewhat concerned”

²¹ Program on Reproductive Health and the Env't, *Public Opinion on Chemicals*, Univ. of Cal., San Francisco, <https://prhe.ucsf.edu/public-opinion-chemicals> (last visited October 11, 2024).

²² Sabrina Hartmann et al., *Interested Consumers' Awareness of Harmful Chemicals in Everyday Products*, 29 *Env't Sci. Eur.* 1, 4 (2017), <https://enveurope.springeropen.com/articles/10.1186/s12302-017-0127-8>.

²³ *Interest in Sustainability Surges for Consumer Products*, Computer Generated Solutions Inc., <https://www.cgsinc.com/en/resources/interest-sustainability-surges-consumer-products> (last visited October 11, 2024).

²⁴ *Consumers willing to pay 9.7% 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>.

²⁵ McKenzie Thomas et al., *Outdoor Home Gardener Preferences for Environmental Attributes in Gardening Supplies and Use of Ecofriendly Gardening Practices*, *HortTechnology*. 30. 1-12. 10.21273/HORTTECH04672-20 (2020), <https://journals.ashs.org/horttech/downloadpdf/view/journals/horttech/30/5/article-p552.pdf>.

about “the health and environmental effects of [PFAS].”²⁶ That same survey found that 34% of consumers would be more likely to shop at a company that banned PFAS “from its products.”²⁷

JURISDICTION AND VENUE

63. This Court has personal jurisdiction over the parties in this case. Plaintiff consents to this Court having personal jurisdiction over it.

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

65. Scotts aims marketing at consumers within the District. The Products can be, and are, purchased in the District by D.C. consumers, who have access to Scotts’s marketing representations about the Products.

66. This Court has subject-matter jurisdiction over this action under the CPPA, D.C. Code §§ 28-3901–13.

PARTIES

67. Plaintiff Beyond Pesticides is a 501(c)(3) nonprofit, 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.

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

²⁶ Danielle Comisso, *Consumer Concern Over PFAS ‘Forever Chemicals’ Continues to Grow*, Civic Science (Aug. 1, 2023), <https://civicscience.com/consumer-concern-over-pfas-forever-chemicals-continues-to-grow/>.

²⁷ *Id.*

69. Beyond Pesticides has an interest in truth in advertising regarding environmental concerns and products marketed as “organic.” The organization diligently works to promote ecological systems that are clean, accessible, and free of contamination.

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

71. In June 2024, EcoScraps Slow Release Fertilizer was purchased from a retailer in the District of Columbia and subsequently sent to an independent laboratory for PFAS testing. The laboratory analyzed for 40 PFAS compounds, of which 18 were detected in the Product.

72. Defendant is incorporated and headquartered in Ohio.

73. Defendant markets and sells the Product in stores and online throughout the United States, including in the District of Columbia.

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

CAUSE OF ACTION

Violations of the District of Columbia Consumer Protection Procedures Act

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

76. Plaintiff is a nonprofit, public interest organization that brings these claims on behalf of the general public of D.C. consumers. *See* D.C. Code § 28-3905(k)(1)(D).

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

78. Additionally, pursuant to § 28-3905(k)(1)(C), the CPPA explicitly allows a nonprofit organization acting on behalf of the general public to establish “tester” standing.

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

80. As alleged in this Complaint, Scotts has falsely and deceptively represented that the Products are “eco friendly” and “sustainable” when, in reality, the Products contain PFAS, which are environmentally hazardous, and which a reasonable consumer would not consider environmentally friendly.

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

JURY TRIAL DEMAND

82. Beyond Pesticides hereby demands a trial by jury.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendant Scotts and requests the following relief:

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

DATED: October 25, 2024

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