

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Patricia Dwyer, individually and on behalf of all
others similarly situated,

Plaintiff,

- against -

Allbirds, Inc.,

Defendant

7:21-cv-05238-CS

First Amended
Class Action Complaint

Jury Trial Demanded

Plaintiff alleges upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

1. Allbirds, Inc. (“defendant”) manufactures, markets, labels, and sells shoes made from wool (“Products”).
2. Consumers are increasingly influenced by the business practices of companies they choose to engage with.
3. Factors important to consumers include whether a company acts in way that protects the environment, labor practices and animal welfare.
4. Allbirds’ marketing is based on all these factors, which has helped it become worth over one billion dollars.¹

I. Misleading Environmental Claims

5. Allbirds’ advertising is heavily based on its Products’ environmental impact.
6. These representations include, “Sustainability Meets Style, “Low Carbon Footprint,”

¹ Daniel J. Murphy, [How Allbirds Built A \\$1.4 Billion Company With A Sustainable Sneaker](https://www.privvy.com/blog/allbirds) April 30, 2020 <https://www.privvy.com/blog/allbirds>; This DTC brand is flying high on sustainable wings; Mary Avant, [How Allbirds Created a Sustainable Supply Chain](#), Sept. 5, 2017, Sourcing Journal.

“Environmentally Friendly,” “Made With Sustainable Wool,” “Reversing Climate Change...,” and “Our Sustainable Practices.”

Reversing Climate Change Through Better Business

Reducing our environmental impact has been a top priority since day one. But now, we're taking things further. Explore our overall sustainability approach, our progress thus far, and our bold list of commitments for 2025.

OUR SUSTAINABLE PRACTICES

7. Allbirds has purchased advertisements so that it is presented to people who search for “ethically made running shoes.”

8. Allbirds uses a life cycle assessment (“LCA”) tool to estimate its Products’ carbon footprint.

9. “Carbon footprint” is defined by Allbirds as “the kg CO₂e emitted to create our products.”

10. In addition to measuring carbon dioxide emissions used to make the Product, Allbirds’ “measure[s] other greenhouse gases, like methane, and convert[s] them to CO₂.”² Kg CO₂e equivalent

11. The life cycle stages include materials, manufacturing, use and end of life.³

12. According to Allbirds, “the average footprint of our products is 7.6 kg CO₂e” or “carbon dioxide equivalent emissions.”⁴

² Barbara Schneider-Levy, [Allbirds Goes Even Greener by Measuring the Carbon Footprint of Its Popular Shoes](#), Footwear News, Apr. 14, 2020.

³ Allbirds Product Carbon Footprint Methodology, April 2020.

⁴ <https://www.allbirds.com/pages/sustainability>

13. The Product identified below purports to have a carbon footprint of 7.1 kg CO₂ equivalent.



14. The most significant component of the LCA is materials, shown above as 5.7 kg CO₂e

15. The environmental impact of apparel materials is measured in accordance with the Higg Material Sustainability Index (“MSI”), developed by the Sustainable Apparel Coalition (“SAC”).

16. The Higg MSI purports to function as a standard, like those developed by established third-party organizations like the International Standards Organization (“ISO”).

17. Compared to similar ISO environmental impact measurements, the methodology used by the Higg MSI does not go beyond the raw material and “provide detailed rules on how to model the life cycle of a product in a specific category.”⁵

⁵ Watson, K. J., and S. G. Wiedemann. "Review of methodological choices in LCA-based textile and apparel rating tools: key issues and recommendations relating to assessment of fabrics made from natural fibre types." Sustainability 11.14 (2019): 3846.

18. Additionally, there are no standards for data submission, to ensure consistency between analysis of different materials.

19. These limitations, according to independent researchers, render the Higg MSI as unsuitable “for public disclosure or comparative assertions, and has limited capability in its present form to enable the textile industry or interested stakeholders to compare different fabric types, or reliably choose between fabric types with confidence that this will result in lower impacts to the environment.”

20. Allbirds’ figures are based on “the most conservative assumption for each calculation, skewing the calculations in its own favor,” so it can make more significant environmental claims.

21. The SAC recognized the limitations of this narrow focus and is revamping the Higg MSI to incorporate “product level environmental impacts.”

22. However, according to People for the Ethical Treatment of Animals (“PETA”), “Allbirds’ life cycle assessment (LCA) tool currently only measures the carbon footprint of each product, meaning that it doesn’t assess any other environmental impact of wool production, including on water, eutrophication, or land occupation.”⁶

23. According to the 2017 Pulse of the Fashion Industry Report, production of wool is second only to silk in the emissions of greenhouse gases and contribution to global warming.

24. This is because sheep farming, like cattle farming, generates significant quantities of methane.

25. Industry sources estimate that one sheep emits 30 liters of methane per day.

26. In New Zealand, where Defendant sources its wool, methane from sheep constitutes

⁶ [Allbirds Is All Wrong—Urge It to Ditch Wool NOW!](#) PETA, Apr. 14, 2021.

90 percent of that nation's total methane emissions.

27. According to submissions to the United Kingdom's House of Commons Environmental Audit Committee, "Sheep are a fully automated system for environmental destruction."

28. Large-scale sheep farming is a major contributor to eutrophication, defined as the "excessive richness of nutrients in a lake or other body of water, frequently due to runoff from the land, which causes a dense growth of plant life and death of animal life from lack of oxygen."

29. The negative effects of sheep farming on soil has been known for decades.⁷

30. Pesticides and insecticides, known as "sheep dip," are regularly applied to sheep to keep them free of parasites.

31. The runoff of these chemicals pollutes waterways, aquifers, and soil.

32. Additionally, these toxic chemicals contribute to neurological disorders in farmers and local communities.⁸

33. Unlike other natural fibers, wool processing requires scouring (cleaning), which involves detergents and inorganic chemicals which runoff into the surrounding areas.

34. Had the entire life-cycle of wool production been considered, the carbon footprint measurements would be significantly greater and exceed the estimated figures by a factor of three.

35. Additionally, "Allbirds' LCA tool uses data from several sources, and there are discrepancies in industry-sourced data," which render it unreliable.

⁷ J. Scott, & Robertson, Fiona. (2008). Environmental effects of sheep farming. 10.1079/9781845934118.0144.

⁸ A. C. Povey, H. G. Rees, J. P. Thompson, G. Watkins, S. J. Stocks, L. Karalliedde, Acute ill-health in sheep farmers following use of pesticides, *Occupational Medicine*, Volume 62, Issue 7, October 2012, Pages 541–548, <https://doi.org/10.1093/occmed/kqs099>

II. Misleading Animal Welfare Claims

36. Allbirds makes numerous claims about the welfare of the sheep which supply the main component of their Product, wool.

Our Sheep Live The Good Life

We work with leading organizations like ZQ Merino to ensure our wool is held to high standards of farming, land management and animal welfare.



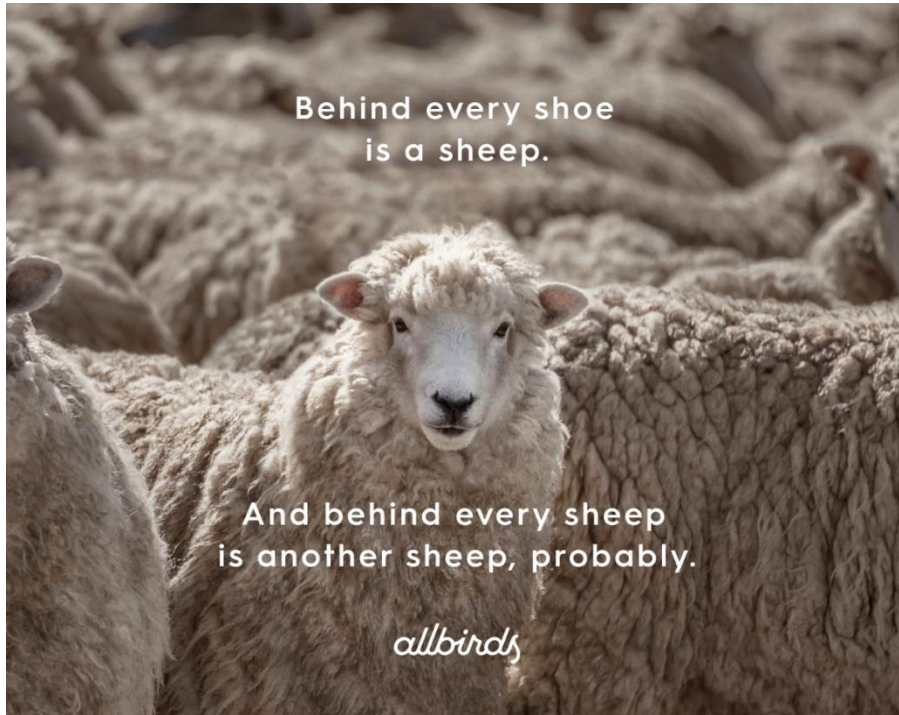
37. Allbirds' advertising is centered around sheep in pastoral settings.



38. One ad states, “What if every time you got a haircut they made shoes out of it? That would be pretty cool.”



39. Another ad states, “Behind every shoe is a sheep. And behind every sheep, is another sheep, probably.”



40. Allbirds promotes its “happy” sheep “behind empty welfare policies that do little to stop animal suffering.”⁹

41. Economic realities dictate – and require – that all sheep bred for wool are also slaughtered and sold for their meat.

42. The sheep industry promotes this fact by labeling them “dual-purpose.”¹⁰

43. Allbirds has claimed that its wool harvesting practices is sustainable, humane and that it intends to eventually source “only wool from ‘regenerative’ sources.”

44. “Sustainable” is defined as “able to be upheld or defended.”¹¹

45. Based on investigations into more than 100 large-scale wool operations, most of which had been promoted in the same terms used by Allbirds – as “sustainable” and “responsible”

⁹ *Id.*

¹⁰ Learn About Wool, [Secondary Fact Sheet](#).

¹¹ Google search, [sustainable definition](#).

– “workers beat, stomped on, cut open the skin of, and slit the throats of conscious, struggling sheep.”

46. These practices are neither sustainable or humane.

47. Sheep raised for their wool in New Zealand and elsewhere are susceptible to “flystrike,” as the area around a lamb’s breech and tail is wrinkled with many folds, attracting parasitic blowflies.

48. Sheep farmers have long practiced mulesing, which involves cutting crescent-shaped flaps of skin from the hind areas.

49. When the wound heals, it creates an area of bare, stretched scar tissue which has no folds or wrinkles and is less likely to attract blowflies.

50. This makes mulesed sheep less susceptible to flystrike in the breech area.

51. Mulesing is performed without anesthesia, and pain relief is not provided.

52. The acute pain lasts from days to weeks, and mulesed lambs suffer declines in socialization and avoidance of humans.

53. Though Allbirds’ claims that its supplier, ZQ Merino, ensures that “sheep live the good life,” this is not feasible when “individual care in such large production numbers has to be almost or absolutely nonexistent.”

54. In wool and meat systems, lambs are often slaughtered between 6 to 9 months old.

55. Other sheep are continually shorn until they are 5 or 6 years old and then slaughtered.

56. Sheep farmers determine when to kill a sheep based on the quality of their wool and their weight.

57. While sheep can naturally live to be up to 14 years old, the “happy” sheep which form the basis of Allbirds’ shoes live a fraction of this time before being shipped on boats for

slaughter, often to the Middle East or China.

58. If Allbirds were required to either truthfully disclose the practices which provide the wool for its shoes, or if it refrained from representing its “humane” and “animal-friendly” attributes, fewer people would buy the shoes.

59. Allbirds’ emphasis on “transparency” is also false, deceptive, and misleading, “as it stonewalls any enquiries into its wool sourcing.”

60. Allbirds passes the buck about its wool production to ZQ Merino.

61. However, ZQ Marino is not transparent with the standards and practices it utilizes, stating, “The ZQ standard is not online because it's an on-farm manual for our growers, not a consumer facing document.”

62. ZQ Marino’s website reveals serious gaps in its ability to ensure that “sheep live the good life.”

63. For instance, it claims to “audit” sheep farms only every three years.

64. More significantly, their website concedes that “the ZQ programme does not extend to certification beyond the farm gate, though we work with many long-term partners within the supply chain, who align with ZQ values and adhere to our Rules of Engagement agreement.”

65. According to PETA, this means that “slaughter and transportation – during which much abuse occurs – are not necessarily covered under the ZQ certification.”

66. Additionally, this certification permits sheep to “be deprived of food and water for up to 48 hours.”

67. ZQ Merino had “claimed that it only sources from countries with strong animal welfare legislation, but the standard now covers farms in Argentina, Australia, and South Africa,

all countries where animal welfare standards are routinely ignored.”¹²

68. PETA also noted that Allbirds’ “use of discarded crab shells as ‘better for the planet,’” is false, deceptive, and misleading.

69. This is because Allbirds purchases “shells from the Canadian snow crab industry, which is an inherently harmful industry,” where “Endangered whales are being caught in snow crab fishing gear, and climate change is threatening the population of snow crabs themselves.”

70. The Products contains other representations which are false and misleading.

71. Reasonable consumers must and do rely on a company to honestly identify and describe the components, attributes, and features of the Product, relative to itself and other comparable products or alternatives.

72. The value of the Product that plaintiff purchased was materially less than its value as represented by defendant.

73. Defendant sold more of the Product and at a higher prices than it would have in the absence of this misconduct, resulting in additional profits at the expense of consumers.

74. Had Plaintiff and proposed class members known the truth, they would not have bought the Product or would have paid less for it.

75. The Product is sold for a price premium compared to other similar products, an average of \$95 per pair for new models, but discounts are available for older models, higher prices than they would otherwise be sold for, absent the misleading representations and omissions.

Jurisdiction and Venue

76. Jurisdiction is proper pursuant to Class Action Fairness Act of 2005 (“CAFA”). 28

¹² Based on the graphic nature of the proven conduct at certain sheep farms, they will not be repeated here but are available at PETA’s website.

U.S.C. § 1332(d)(2).

77. Upon information and belief, the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs.

78. Plaintiff Patricia Dwyer is a citizen of New York.

79. Defendant Allbirds, Inc. is a Delaware corporation with a principal place of business in San Francisco, San Francisco County, California

80. The parties are citizens of different states.

81. Venue is proper because plaintiff resides in this judicial district, and a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

Parties

82. Plaintiff Patricia Dwyer is a citizen of Stony Point, Rockland County, New York.

83. Defendant Allbirds, Inc., is a Delaware corporation with a principal place of business in San Francisco, California, San Francisco County.

84. Defendant is a shoe brand built on direct-to-consumer (“D2C”) sales.

85. Defendant’s products are sold to consumers through its website, its brick-and-mortar stores, and increasingly, through third-parties, such as Nordstrom.

86. The average price of the shoes is \$95 per pair, but some older products are sold for half this amount.

87. Defendant is valued at \$1.4 billion, based on its most recent funding.

88. Defendant has raised close to \$100 million from deep-pocketed investors.

89. Plaintiff bought the Product at or exceeding the above-referenced prices, on one or more occasions at one or more locations, including in 2021, from stores including Walmart and from Walmart.com.

90. Plaintiff relied on the representations identified here, which she observed over the internet.

91. Plaintiff chose between Defendant's Product and other similar products which were represented similarly, but which did not misrepresent their attributes and/or lower-priced products which did not make the claims made by Defendant.

92. The Product was worth less than what Plaintiff paid and she would not have paid as much absent Defendant's false and misleading statements and omissions.

93. Plaintiff intends to, seeks to, and will purchase the Product again when she can do so with the assurance that Product's representations are consistent with its capabilities and features.

Class Allegations

94. The class will consist of all New York, residents who purchased the Product during the statutes of limitations for each cause of action alleged.

95. Common questions of law or fact predominate and include whether defendant's representations were and are misleading and if plaintiff and class members are entitled to damages.

96. Plaintiff's claims and basis for relief are typical to other members because all were subjected to the same unfair and deceptive representations and actions.

97. Plaintiff is an adequate representative because her interests do not conflict with other members.

98. No individual inquiry is necessary since the focus is only on defendant's practices and the class is definable and ascertainable.

99. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest relative to the scope of the harm.

100. Plaintiff's counsel is competent and experienced in complex class action litigation

and intends to protect class members' interests adequately and fairly.

101. Plaintiff seeks class-wide injunctive relief because the practices continue.

New York General Business Law (“GBL”) §§ 349 & 350

(Consumer Protection Statute)

102. Plaintiff incorporates by reference all preceding paragraphs.

103. Plaintiff and class members desired to purchase a product which was sustainable and ensured the well-being of the sheep.

104. Defendant's false and deceptive representations and omissions are material in that they are likely to influence consumer purchasing decisions.

105. Defendant misrepresented the Product through statements, omissions, ambiguities, half-truths and/or actions.

106. Plaintiff relied on the representations.

107. Plaintiff and class members would not have purchased the Product or paid as much if the true facts had been known, suffering damages.

Breaches of Express Warranty.

108. The Product was manufactured, labeled, and sold by defendant and expressly and impliedly warranted to plaintiff and class members that it was sustainable and ensured the well-being of the sheep.

109. Defendant had a duty to disclose and/or provide non-deceptive descriptions and marketing of the Product.

110. This duty is based on Defendant's outsized role in the market for this type of Product.

111. Plaintiff provided or will provide notice to defendant, its agents, representatives, retailers, and their employees.

112. Defendant received notice and should have been aware of these issues due to complaints by regulators, competitors, and consumers, to its main offices.

113. The Product did not conform to its affirmations of fact and promises due to defendant's actions and were not merchantable because they were not fit to pass in the trade as advertised.

114. Plaintiff and class members would not have purchased the Product or paid as much if the true facts had been known, suffering damages.

Fraud

115. Defendant misrepresented and/or omitted the attributes and qualities of the Product, that it was sustainable and ensured the well-being of the sheep

116. Defendant's fraudulent intent is evinced by its knowledge that the Product was not consistent with its composition and qualities.

Unjust Enrichment

117. Defendant obtained benefits and monies because the Product was not as represented and expected, to the detriment and impoverishment of plaintiff and class members, who seek restitution and disgorgement of inequitably obtained profits.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

WHEREFORE, Plaintiff prays for judgment:

1. Declaring this a proper class action, certifying plaintiff as representative and the undersigned as counsel for the class;
2. Entering preliminary and permanent injunctive relief by directing defendant to correct the challenged practices to comply with the law;

3. Injunctive relief to remove, correct and/or refrain from the challenged practices and representations, and restitution and disgorgement for members of the class pursuant to the applicable laws;
4. Awarding monetary damages, statutory damages pursuant to any statutory claims and interest pursuant to the common law and other statutory claims;
5. Awarding costs and expenses, including reasonable fees for plaintiff's attorneys and experts; and
6. Other and further relief as the Court deems just and proper.

Dated: August 25, 2021

Respectfully submitted,

Sheehan & Associates, P.C.

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