

## Plaintiff Fails to Butter Up Court with Mashed Potato Suit

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We have previously written about decisions addressing food product labels, and the messages that these labels convey about the products' ingredients. In [\*Jessani v. Monini\*](#), the Second Circuit found that a product label for "white truffle flavored" olive oil did not imply that the product contained actual white truffles. Not long afterwards, the Second Circuit ruled in [\*Mantikas v. Kellogg\*](#) that the claim "made with whole grain" could be misleading with respect to crackers containing more white flour than whole wheat flour.

Last month, Judge Nicholas G. Garaufis of the Eastern District of New York added to this growing body of case law in an opinion dismissing a putative class action lawsuit against the maker of refrigerated mashed potatoes. [\*Reyes v. Crystal Farms Refrigerated Distribution Co., 19-cv-2250 \(E.D.N.Y. 2019\)\*](#). The plaintiff alleged labels claiming that the products are "made with real butter" and "made with fresh whole potatoes" are deceptive because, in addition to containing those ingredients, the products also contain margarine and preservatives. The complaint asserted claims of deceptive business practices and false advertising under New York General Business Law ("GBL") §§ 349 and 350, as well as claims of fraud, negligent misrepresentation, breach of express and implied warranty of merchantability, and unjust enrichment.

Judge Garaufis first addressed the alleged violations of GBL §§ 349 and 350, which require the defendant to have engaged in conduct that would be materially misleading to a reasonable consumer. Neither of the defendant's contested statements, according to Judge Garaufis, rose to this level. To begin with, the complaint did not allege that the statements "made with real butter" and "made with fresh whole potatoes" were literally untrue. As the complaint did not dispute, the products do contain butter and whole potatoes.

Judge Garaufis next found that no reasonable consumer would be misled by the product labels. Any reasonable consumer who wondered whether the products that were "made with real butter" also contained margarine could simply look at the ingredient list, which discloses margarine as an ingredient. And it is common knowledge that potatoes must be cooked before being mashed, so no reasonable consumer would assume that the statement "made with fresh whole potatoes" means that the mashed potatoes themselves (rather than the potatoes from which they were made) are

“fresh,” as opposed to being preserved.

Judge Garaufis noted that his decision was consistent with, and distinguishable from, the Second Circuit’s decision in *Mantikas*. Unlike *Mantikas*, in which crackers “made with whole grain” contained less whole wheat flour than white flour, the plaintiff here did not allege that mashed potatoes “made with real butter” contained less butter than margarine. In addition, while the opinion did not rely on *Monini*, it is consistent with that ruling too. Like the court in *Monini*, Judge Garaufis noted that the ingredient list here clarified any possible ambiguity created by the label claims. Moreover, just as the Second Circuit found in *Monini* that consumers’ awareness of white truffles’ price would prevent them from mistakenly believing truffles were present in a modestly-priced olive oil, Judge Garaufis found that consumers’ knowledge of the mashed potato manufacturing would prevent them from mistakenly concluding such products are “fresh.”

Because the statements were neither false nor misleading, plaintiff’s fraud, negligent misrepresentation, breach of warranty, and unjust enrichment claims were also dismissed.

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