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Beverage Mislabeling Suit Runs Out of Juice

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On February 6, the California Court of Appeals (Second Appellate District) sustained a lower court's dismissal of a putative class action alleging that the claim "no sugar added" on the label of tangerine juice is deceptive because it falsely implies that competing products *do* contain added sugar. *Schaeffer v. Califia Farms*, BC654207 (Cal. App. 2d Feb. 6, 2020).

The complaint was brought by plaintiff Michelle Schaeffer against Califia Farms, manufacturer of the tangerine juice "Cuties Juice." The plaintiff, a diabetic, alleged she bought Cuties Juice because she believed, on the basis of the "no sugar added" claim, that competing brands of juice do contain added sugar, and thus more sugar overall than Cuties Juice. The complaint alleges this implied message is false, in violation of California's UCL, FAL, and CLRA. The plaintiff sought to certify a class of all persons in the United States who purchased one or more containers of Cuties Juice containing the phrase "no sugar added" on the label or packaging.

The Court of Appeals first addressed whether the "no sugar added" statement was misleading, and explained that statements on product labels fall along a spectrum. At one end, the most actionable statements about a product are those that are literally false. At the other end of the spectrum, the statements about a product least likely to be actionable are those that are literally true and do not on their face mention or otherwise reference competing products. The court stated that whether such statements are actionable will turn on whether a reasonable consumer is likely to 1) infer that the true statement is untrue as to competing products; 2) infer that the product at issue is therefore superior to its competition; and 3) be deceived if the statement is in fact true as to those competing products.

The court concluded that the Cuties Juice "no sugar added" claim falls into the latter category, and that reasonable consumers were unlikely to draw the inferences necessary for such a statement to be actionable. It noted that adopting plaintiff's theory would open up potential liability for almost any truthful advertising statement concerning a product's benefits, and that previous decisions by the Court of Appeals had rejected similar reasoning.

The court also rejected plaintiff's argument that the "no sugar added" statement was "unlawful" in violation of the UCL because it supposedly violates federal regulations. Under federal regulations, the

phrase “no sugar added” may be used only if it meets five criteria, two of which plaintiff alleged are not met by Cuties Juice: 1) that the food the product resembles and for which it substitutes normally contains added sugars, and 2) that the phrase is accompanied where applicable by statements that the product is not low calorie, and directs consumers’ attention to the nutrition panel for information on sugar and calorie content. The court found that the first of these criteria was met because the products Cuties Juice “resembles and for which it substitutes” are “all fruit juices,” many of which contain added sugars. As for the second criterion, the court held that plaintiff did not have standing to bring an argument based on the lack of a calorie content label because she did not allege that her purchase of Cuties Juice was motivated by its calorie content.

Like a number of cases we have blogged about, this decision reaffirms the uphill battle faced by plaintiffs attempting to bring false advertising suits on the basis of literally true statements, and provides further assurance to advertisers that truth is often the best defense. Watch this space for further developments.

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