

Northern District of California Sours Plaintiff's Claims against "Vanilla" Soymilk Maker

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The Northern District of California recently dismissed a Plaintiff's claim that the term "vanilla" was misleading on the label of a soymilk product, but left the proverbial door open for the filing of an amended pleading.

In *Clark v. Westbrae Natural, Inc.*, Case No. 20-cv-03221, Plaintiff alleged that Defendant's use of the word "vanilla" on the label of its organic unsweetened soymilk misrepresented to consumers that the product's vanilla flavor was derived exclusively from the vanilla bean plant. Gas chromatography/mass spectrometry analyses showed that the flavor came from a non-vanilla source. Plaintiff alleged he would not have purchased the product had he realized the flavor was not derived from the vanilla bean, and asserted claims under California's Unfair Competition Law, False Advertising Law, and Consumers Legal Remedies Act. He argued that the product should be labeled "artificially flavored."

Defendant moved to dismiss and requested the Court take judicial notice of the product's full label and associated webpage. The Court did so for the label, but held that taking judicial notice of the webpage would be improper for two reasons: the contents of the webpage did not form the basis of Plaintiff's complaint, and the website was maintained to further Defendant's business interests. Therefore, the webpage was not public information and the Court did not take judicial notice of it.

In support of its motion, Defendant argued that Plaintiff failed to allege that a reasonable consumer would be deceived by the "vanilla" label into believing the product's flavor was derived exclusively from vanilla bean. Plaintiff conceded that in order to prevail, he needed to satisfy this reasonable consumer standard, under which plaintiffs must show that members of the public are "likely to be deceived." Plaintiff noted that a survey of more than 400 consumers showed that more than 69.5% of consumers believed the use of the term "vanilla" meant the product's vanilla flavor came exclusively from vanilla bean.

The Court held that the word "vanilla" did not suggest to a reasonable consumer that the flavor came exclusively from vanilla bean, and noted that the label did not contain any other vanilla-related words or pictures. Regarding the survey of 400 consumers, the Court held this did "not push Plaintiff's reasonable consumer allegation over the plausibility line." The Court underscored that Plaintiff had not even alleged what the survey asked participants, so it was "impossible" to infer that of the

common-sense understanding of the term “vanilla” indicated a product was flavored exclusively with vanilla bean. “At bottom, the vague survey allegation d[id] not make plausible that reasonable consumers understand that ‘vanilla’ soymilk is flavored exclusively with vanilla bean.”

The Court similarly held that Plaintiff failed to allege a claim for violation of 21 C.F.R. 101.22(i)(1), which governs labeling for spices, flavorings and colorings in foods, because Plaintiff did not tether any of his allegations to section 101.22, and did not even cite any sections of the Code of Federal Regulations in its pleading.

Ultimately, the Court granted Defendant’s motion to dismiss, but provided Plaintiff twenty days to file an amended pleading. In the event Plaintiff re-files, the Court’s treatment of the amended pleading may shed light on what allegations are sufficient to state a claim for relief when plaintiffs also allege a survey showing consumers are misled. Based upon how the Court has ruled already, another, more targeted opinion dismissing the amended complaint would not be unexpected. This would not be a controversial outcome, and some would likely describe it as somewhat *vanilla*.

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