

“Vanilla” Milk Claims Continue to Sour as Southern District of New York Dismisses Putative Class Action Complaint

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As we discussed in a [previous post](#), the Northern District of California recently dismissed a plaintiff’s claim that the term “vanilla” was misleading on the label of a soymilk product. The Southern District of New York has now similarly dismissed a putative class action complaint alleging that a “vanilla” almond milk product was labeled in a way that misled customers.

In *Wynn v. Topco Associates, LLC*, No. 19-cv-11104, Plaintiffs alleged that Defendant’s use of the word “vanilla” on the label of its almond milk product – “Vanilla Almost Milk” – falsely communicated to consumers that the beverage’s flavor was derived entirely from real vanilla, when in fact the product includes non-vanilla flavorings. Plaintiffs claimed, among other things, that this violated the New York General Business Law (NYGBL).

Defendant moved to dismiss for failure to state a claim pursuant to Rule 12(b)(6). In order to state a claim under the NYGBL, a plaintiff must allege that the defendant engaged in consumer-oriented conduct that materially misled customers and that plaintiff sustained an injury as a result. Here, Plaintiffs argued that the word “vanilla” as used by Defendants was misleading to a reasonable consumer because it implies that the beverage’s flavor was derived exclusively from real vanilla.

Assuming that Defendant’s product was not exclusively flavored with real vanilla, and that this distinction was material as Plaintiffs alleged, the court nevertheless held that Plaintiffs failed to plausibly allege that a reasonable customer would conclude that the word “vanilla” on a product’s front label implies that the product was flavored only with natural vanilla extract. Noting that four other similar claims had recently been dismissed in the District, the court found Plaintiffs’ allegations to be merely “conclusory statements.” The court held that the product’s “front label makes no representations whatsoever about the source of the vanilla flavor or the ingredients constituting it—and indeed Plaintiffs acknowledge that the flavor is at least partially constituted by real vanilla.” Accordingly, the court dismissed Plaintiffs’ NYGBL claim.

Plaintiffs also argued that the product’s ingredient list was misleading because “the product contains undisclosed artificial flavors.” But the court held that Plaintiffs failed to sufficiently allege that non-vanilla flavors in the almond milk were in fact “artificial.” The three flavorings flagged by Plaintiffs in their amended complaint could be either artificial or natural, depending on how they are derived, and Plaintiffs did not allege that these flavorings in Defendant’s product were artificially derived. As a

result, the court also dismissed Plaintiff's claim regarding the ingredient list.

The court held Plaintiffs' remaining claims for negligent misrepresentation, breach of warranty, fraud, and unjust enrichment also failed as a matter of law, in large part because they hinged on the same theory of misleading business practices already rejected by the court.

Ultimately, the court granted Defendant's motion to dismiss, but provided Plaintiffs until February 19, 2021, to file an amended pleading, "to the extent that they have a good-faith basis to do so."

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