

# The California "Food Court" Kicks the Proper Use Of The Term "Natural" To Food and Drug Administration (FDA)

Article By:

Consumer Product Safety at Mintz Levin

---

In what may be an indication of things to come, the Food Court (US District Court Northern District of California) has decided to ask FDA for guidance on what it wants on food labels. The Food Court directly addressed the labeling of foods containing GMOs as "natural" in a recent ruling on a motion to dismiss. In *Cox v. Gruma Corp.*, Judge Gonzalez Rogers stayed the case for six months and referred the matter to FDA for an administrative determination of "whether and under what circumstances food products containing ingredients produced using bioengineered seed may or may not be labeled 'Natural' or 'All Natural' or '100% Natural'." The court did so under the auspices of the primary jurisdiction doctrine, which "applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body." In other words, because food labeling is a matter that Congress has indicated requires FDA's expertise and uniformity in administration, it is appropriate for FDA, not the court, to determine how the term may rightfully be used. Based on FDA's history in attempting to define the word, however, don't hold your breath for a prompt definition.

On the same day, the same judge dismissed a would-be class action case concerning soy yogurt products, also on primary jurisdiction grounds. Judge Gonzales Rogers said that FDA should determine "what the appropriate rules should be" with respect to use of the terms "evaporated cane juice" and "soy yogurt." See *Hood v. Wholesoy & Co.* FDA has not come to any clear conclusion regarding whether the Standards of Identity for yogurt encompass non-dairy, soy yogurt, or whether use of the term "evaporated cane juice" violates regulations requiring food ingredients to be listed by their common names. "In the absence of such a clear statement, should the court go forward with consideration of the complaint, it would find itself in a position of either having no set Standard to apply, or announcing a Standard and thereby overstepping its proper role."

The difference in the outcome of the two cases is that one was based on the term "natural," which remains undefined by FDA. Conversely, yogurt products and the use of common names are already heavily and specifically regulated, so whether soy yogurt and evaporated cane juice are included in the existing regulations only requires clarification by FDA.

Source URL: <https://natlawreview.com/article/california-food-court-kicks-proper-use-term-natural-to-food-and-drug-administration>