

# 100% Pure, Natural False Advertising Litigation

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One of the worst-kept secrets among the plaintiffs' bar is that claims like "pure" and "natural" on consumer-product labels can lead to class-action claims. Two recent court decisions denying motions to dismiss underscore the continued risk.

In *Winans v. Ornuva Foods North America Inc.*, the Eastern District of New York partially denied the defendant's motion to dismiss claims that butter products were misbranded as "pure Irish butter" despite allegedly containing artificial "forever chemicals" known as PFAS. The court held that the plaintiff plausibly alleged that "forever chemicals" in the products' packaging could have migrated into the butter. The court also held that it was plausible for a reasonable consumer to believe the word "pure" in "pure Irish butter" indicates the absence of contaminants in the butter. Accordingly, the court allowed the claims to proceed, except for the public injunction claim.

In *Fleming v. Dr. Squatch, LLC*, the Northern District of Illinois partially denied the defendant's motion to dismiss claims that shampoo products were deceptively labeled as "Men's natural shampoo" despite containing artificial ingredients. The court rejected the defense argument that the plaintiff must have seen the product's ingredient list and a product web page specifying that certain ingredients were "Man Made" and thus could not have been deceived. The court refused to make presumptions about what the plaintiff had seen before purchasing the product, holding that this was an issue of fact for discovery. As such, the court allowed the consumer fraud and unjust enrichment claims to proceed.

In both cases, the courts acknowledged that, in ruling on the plausibility of claims on a motion to dismiss, they were bound to draw all inferences in favor of the plaintiffs. That black-letter legal standard, while unremarkable itself, is a main driver of risk for advertisers making "pure" and "natural" claims. In other words, while an advertiser may feel strongly that its particular use of that wording is truthful, non-misleading, and substantiated — it may nevertheless face the expense and distraction of discovery, class certification, summary judgment or even trial. Some pure, natural caution is advisable.

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