

Tom's of Maine Hit with 'Natural' Toothpaste Lawsuit

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Toothpaste manufacturer Tom's of Maine was hit with a putative class action in the **Southern District of Florida** regarding its marketing of its "Natural" toothpaste products. Labeling and marketing campaign, which advertises its toothpaste as "all natural" and containing "natural" ingredients, is false and misleading because the products "contain ingredients that are heavily chemically processed, including xylitol and sodium lauryl sulfate."

"This case is one of many "all natural" lawsuits filed against consumer products companies in the last few years. As with others, the Plaintiff here acknowledges that there is no uniform definition of "natural" ingredients in over-the-counter drugs, but claims that "no reasonable definition of 'natural' includes ingredients that, even if sourced from 'nature,' are subjected to extensive, transformative chemical processing before their inclusion in a product."

A recent ruling in the Central District of California that marked a victory for a company using the term "natural" to advertise its shampoo and lotion products and provided a gleam of hope and guidance for businesses facing the increasing wave of class actions asserting "all natural" claims. *Balser v. The Hain Celestial Group, Inc.*, CV 13-05604-R, December 18, 2013 (dismissing complaint with prejudice).

Applying the principals discussed in that case begs the question of whether the Plaintiff suing Tom's will be able to overcome that "there are no [toothpaste] trees," or that "natural" is an ambiguous term without a single or universal definition. Indeed, similar to *The Hain Celestial Group*, Tom's provides a statement on its website regarding what it considers to be its "standards for natural."

One thing is clear — "natural" suits implicate a number of issues that courts may or may not be best positioned to address. These issues include, but are not limited to:

- Genetically modified ingredients (GMOs)
- Fertilizer use
- Nanotechnology
- Pasteurization

- Irradiation
- Hydrogenation
- Synthetic versus natural safety considerations
- First Amendment implications
- Processing volume

Until these issues are addressed, given the lack of guidance to consumers and companies, and in light of the FDA's recent refusal to define "natural" even after being urged to do so by courts adjudicating these cases, we will likely see this type of litigation continue.

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