

Lawful Waffle: California Courts Dismiss “Natural” Food False Ad Claims

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Two California courts have recently dismissed false advertising claims concerning the marketing of food products as “natural,” marking a departure from the trend in consumer class actions in that state.

In *Richards et al. v. Safeway, Inc.*, 13-cv-04317, the plaintiff alleged that Safeway falsely labeled its Open Nature 100% Natural Multi-Grain Waffles and Open Nature 100% Natural Homestyle Waffles as being “100% Natural.” According to Richards, the “100% Natural” label induces consumers to pay a premium price for the products but the products are not entirely natural because they contain the synthetic chemical preservative Sodium Acid Phosphosphate. In a September 22, 2014 order, Judge James Donato granted a partial dismissal, finding that Richards “stated a claim only with respect to the statements on the product labels that he relied on.” The judge gave Richards leave to amend the complaint with respect to the non-label statements made by Safeway (e.g., on its website or in other advertising) that Richards had not alleged he relied upon. The court dismissed with prejudice Richards’ claim for unjust enrichment, agreeing with other California courts that this was not a standalone cause of action, and also dismissed with prejudice the injunctive relief claim because Richards could not plausibly allege that he would purchase the products again now that he was aware of their synthetic ingredient.

The second case, *Morales et al. v. Kraft Foods Group, Inc.*, 14-cv-04387, concerns Kraft’s advertising for its Natural Fat Free Cheddar Cheese. According to plaintiffs, Kraft labels and markets its product as “natural” even though it contains artificial color, and thus has violated California false and misleading advertising law and the Consumers Legal Remedies Act. Kraft argued in support of its motion to dismiss that the term “natural” in the context of cheese means that it is made directly from milk (as opposed to processed cheese). On September 29, Judge John A. Kronstadt issued an oral opinion dismissing the lawsuit for failure to meet pleading standards because the complaint did not specify which advertisements were at issue. The judge did, however, give the plaintiffs two weeks to file an amended complaint.

California has traditionally been viewed as a consumer-friendly forum, making it a popular venue for false advertising class actions. It remains to be seen whether these cases are one-off decisions on narrow, fact-specific grounds, or whether California courts will continue and expand upon this trend in the other direction.

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National Law Review, Volume IV, Number 308

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