

# Organic Baby Food for Thought: Second Circuit Holds that OFPA Certified Organic Product Labels Cannot Be Challenged as Misleading Under State Law

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The Second Circuit recently affirmed the dismissal of a class action asserting state law claims that a manufacturer falsely advertised its baby formula as organic. In doing so, the appellate court agreed with the district court's finding that the claims were preempted by a federal law called the Organic Foods Production Act ("OFPA"). *Marentette v. Abbott Labs.*, 886 F.3d 112 (2d Cir. 2018).

A group of parents who purchased baby formula sued Abbott under state law for allegedly marketing its baby formula as organic even though it supposedly did not qualify as such under state law as plaintiffs construed it. However, the OFPA has its own process for determining whether products can be labeled as organic, and the baby product at issue had already been certified as organic pursuant to the OFPA's statutory scheme. Thus, the district court found plaintiffs' claims to be preempted.

In affirming the district court's ruling that plaintiffs' state law claims "posed an obstacle to Congress's objectives in enacting the OFPA," the Second Circuit elaborated that there was simply no way to rule in plaintiffs' favor without contradicting the certification decision by an accredited certifying agent acting pursuant to the OFPA's terms. Thus, the Second Circuit found a direct conflict between plaintiffs' construction of state law and the structure and purpose of the OFPA.

The Second Circuit noted that an OFPA-compliant certification of a product as organic does not automatically preclude all false advertising lawsuits addressing an advertiser's touting its product as organic. Citing a decision by the Eighth Circuit, the Court of Appeals acknowledged that a suit claiming that an advertiser materially misrepresented to the accredited certifying agent the facts related to the ingredients and/or manufacturing process that led to the agent's certification of a product as organic would not be preempted by the OFPA. However, where as here, a plaintiff's state law claim is premised on a different determination of what is "organic" than the OFPA provides, the state law claim is preempted.

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