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Gin Manufacturer Bacardi Avoids Lawsuit for Its Use of “Grains of Paradise”

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A federal judge in the Southern District of Florida recently dismissed an action alleging that Bacardi’s use of a botanical called “grains of paradise” in its gin was “harmful and illegal,” holding that the statute on which the lawsuit was based was preempted by federal law. *Marrach v. Bacardi U.S.A,* 19-cv-23856 (S.D. Fla. Jan. 28, 2020).

The complaint alleged a violation of the Florida Deceptive and Unfair Trade Practices Act. While Plaintiff himself suffered no harm from the drink, he cited a nineteenth-century provision forbidding the adulteration of alcoholic beverages with “grains of paradise” to support his claim that Bacardi’s use of the botanical was illegal. However, Bacardi argued in its motion to dismiss that the complaint was preempted because the Federal Food, Drug and Cosmetic Act (FDCA) permits the use of “grains of paradise.”

In an opinion that did not mince words, Judge Robert N. Scola granted the motion to dismiss, opening with the observation: “Numerous class actions have greatly benefited society such as *Brown v. Board of Education*, *In re Exxon Valdez*, and *In re Agent Orange Product Liability Litigation*. This is not one of those class actions.” He noted that the Food Additives Amendment of 1958 granted the FDA broad authority to monitor and control the introduction of food additives, signaling Congress’s intent to prevent rules unnecessarily prohibiting access to safe food additives. Judge Scola held that the Florida statute, which criminalizes adulterating liquor with grains of paradise, frustrated this purpose and was therefore preempted because it was in conflict with federal law.

Plaintiff attempted to counter this reasoning by arguing that the 21st Amendment gave states the right to regulate liquor, thereby overriding any argument that federal law governed in this matter. Judge Scola disagreed. As an initial matter, "the 21st Amendment does not in any way diminish the reach of the Supremacy Clause," and therefore has neither the intent nor effect of undermining federal preemption of inconsistent state law. Moreover, Judge Scola noted that other courts have found similar state law prohibitions on food additives to be preempted by the FDCA.

Like previous cases we have covered on this blog, the decision underscores the FDA's broad regulatory authority over food and beverage products which cannot be circumvented by plaintiffs simply by bringing claims under state law. In doing so, it provides important assurance to manufacturers of such products that their reliance on federal law will not be undercut by arcane state provisions.

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