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Second Circuit Finds Consumer Suit Against Dunkin' Not Well Done

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A Second Circuit panel recently affirmed the dismissal of a putative false advertising class action against Dunkin' Brands, which alleged the company misled consumers as to the contents of products Dunkin' described as "Angus steak." *Chen v. Dunkin' Brands,* 18-cv-3087 (2d Cir. Mar. 31, 2020). The complaint asserted claims under various state consumer protection laws, including New York General Business Law ("GBL") §§ 349 and 350. The district court dismissed the non-New York plaintiffs for lack of personal jurisdiction, and found the complaint failed to state a claim under the GBL.

The plaintiffs alleged Dunkin' deceptively marketed two of its trademarked products: the Angus Steak & Egg Breakfast Sandwich and the Angus Steak & Egg Wake-Up Wrap. Plaintiffs claimed that, through representations made in labeling and television advertisements, Dunkin' deceived consumers into believing that these products contained an "intact" piece of meat, when the products actually contained a ground beef patty with additives.

The complaint identified three allegedly misleading television advertisements that showed actors holding the products, which were described using the words "Angus" and "steak." However, the panel noted that all three advertisements concluded with multiple zoomed-in images that clearly showed the "steak" was a beef patty. Because no GBL claim can stand if the allegedly deceptive practice is fully disclosed, the panel concluded that the district court properly decided as a matter of law that the advertisements were not actionable under the GBL. Additionally, the district court's dismissal was supported by the dictionary definition of steak, which includes both "a slice of meat" *and* "ground beef prepared for cooking or for serving in the manner of a steak."

It was also undisputed that the two products did in fact contain “Angus beef” (that is, beef derived from the Angus breed of cattle). While literally accurate statements can still be misleading, the court emphasized the importance of context in determining whether a reasonable consumer would have been misled by a particular advertisement. In this case, the plaintiff bought the Angus Sandwich for less than $4 and the Angus Wrap for less than $2. As the television advertisements showed, the products were marketed and sold as ‘grab-and-go products’ that could be consumed in hand, without the need for a fork and knife. The court concluded that a reasonable consumer purchasing one of the products from Dunkin’ in that context would not be misled into thinking she was purchasing an unadulterated, intact piece of meat.

This decision is another in a long line of cases from the Second Circuit and other circuit courts (including cases we have covered on this blog) recognizing that common sense and the ordinary meaning of words are key considerations when a court assesses the plausibility of a false advertising complaint at the motion to dismiss stage.

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