

Seventh Circuit Finds No Evidence of Deception in Aloe Vera Gel Labeling Lawsuit

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Last month, a Seventh Circuit panel unanimously affirmed the district court's grant of summary judgment dismissing a consumer class action alleging that Fruit of the Earth and its retailer clients deceptively labeled aloe vera gel products. [*Beardsall v. CVS*, 19-1850 \(7th Cir. Mar. 24, 2020\)](#).

Defendants' aloe vera products are labeled as "Aloe Vera 100% Gel" and "100% Pure Aloe Vera Gel" followed by an asterisk, with a disclaimer stating that the product includes stabilizers and preservatives to ensure potency and efficacy. The product labels also tout aloe vera's therapeutic benefits, including relief of sunburn. Plaintiffs alleged in their complaint that the labeling was deceptive for three reasons, all of which were rejected by the district court on summary judgment.

First, Plaintiffs argued Defendants' products contain a low concentration of acemannan, a chemical compound found in aloe vera responsible for its therapeutic qualities. According to Plaintiffs, it was therefore misleading to characterize the products as "100%" aloe vera and to market them as providing the therapeutic effects associated with aloe vera gel, as no reasonable consumer would purchase an aloe vera product containing low concentrations of this compound. However, Plaintiffs offered no survey or other evidence that acemannan concentration matters to consumers, and the Seventh Circuit therefore affirmed the district court's holding that Plaintiffs failed to carry their burden in a false advertising case of showing that the labeling would be *materially* misleading to reasonable consumers.

Second, Plaintiffs claimed Defendants' aloe vera products did not achieve the therapeutic effects claimed on the product labels. This argument was similarly unavailing because again, Plaintiffs did not produce any evidence that Defendant's products lack therapeutic efficacy. The Seventh Circuit rejected Plaintiffs' argument that Defendants should be required to demonstrate the products' effectiveness, noting that this got the burden of proof backwards.

Third, Plaintiffs took issue with Defendants' claims that their products were "100%" aloe vera. Plaintiffs argued Defendants' label descriptions "Aloe Vera 100% Gel" and "100% Pure Aloe Vera Gel" suggested its products were of "high quality" or "especially effective." But the Seventh Circuit found no evidence of this interpretation by consumers, nor evidence that a certain amount of acemannan is needed for an aloe vera product to be called "100% pure." The court also rejected Plaintiffs' contention that, due to the inclusion of stabilizers and preservatives in the products, Defendants' "100%" labeling violated state consumer fraud laws because it did not comply with an FDA regulation stating that the labeling of a cosmetic "may be misleading" by bearing a "name which includes or suggests the name of one or more but not all such ingredients, even though the names of all such ingredients are stated elsewhere in the labeling." Notwithstanding this regulation, the Seventh Circuit deemed the "presence of other substances in the product—and the disclosure of those products in the ingredients list—[] irrelevant" because of Plaintiffs' concessions that small amounts of acemannan were "acceptable" and even "expected," and that "no plaintiff took the label to mean that there was absolutely nothing other than aloe vera in the bottle."

In light of Plaintiffs' many evidentiary shortcomings, the Seventh Circuit affirmed summary judgment in favor of Defendants. This decision is a reminder that if a class action complaint making farfetched allegations of false advertising manages to survive a motion to dismiss under the lenient pleading standard, untenable theories of false advertising will often fail at the summary judgment stage if the plaintiffs lack any evidence to support their claims.

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