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Survey Evidence in Amended Complaint Does Not Add Enough Juice to Save “Natural” Claims Against Mott’s Apple Products

Proskauer on Advertising Law on **December 1, 2020**

Judge Beth Freeman of the U.S. District Court for the Northern District of California recently dismissed with prejudice a putative class action alleging that Mott’s apple-based products were deceptively labeled “Natural” and as containing “All Natural Ingredients.” *Yu v. Dr Pepper Snapple Group*, No. 18-cv-06664-BLF (N.D. Cal. Oct. 6, 2020). In doing so, Judge Freeman determined that newly-added allegations about consumer surveys in the amended complaint were not enough to save plaintiff’s claims.

Plaintiff alleged that several Mott’s applesauce and apple juice products were falsely labeled as “Natural” and/or having “All Natural Ingredients” when in fact they contained trace amounts of acetamiprid—an insecticide. Judge Freeman previously dismissed the original complaint because it did not plausibly allege a reasonable consumer would understand the label claims to mean the products contain absolutely zero residual pesticides, which plaintiffs alleged existed in trace amounts in the products, but as the court observed, within FDA guidelines.

Plaintiff tried to cure this deficiency in the amended complaint by adding allegations related to two surveys: first, that a January 2019 survey reported that 68.1% of participants would consider crops sprayed with pesticides not “natural,” and second, that a 2015 phone survey reported that 63% of respondents believed a “natural” label on packages meant “no toxic pesticides were used.”

In dismissing the claims for the second time, Judge Freeman explained that under the Ninth Circuit's ruling in *Becerra v. Dr. Pepper*, 954 F.3d 1225 (9th Cir. 2019) (a case we previously blogged about), a "plaintiff cannot rely on consumer surveys alone to make plausible the allegation that reasonable consumers are misled when the complaint does not otherwise plead facts establishing deception." The Court found it implausible as a matter of law that reasonable consumers would interpret the word "natural" to mean a food product is completely free of any trace pesticides.

The Court also noted that both surveys plaintiff relied on had been rejected by other courts. For instance, the 2015 survey had been rejected because it failed to define "toxic pesticides," the "use" of those chemicals, or what it meant to have a "natural label." *Axon v. Citrus World*, 354 F.Supp.3d 170 (E.D.N.Y. 2018). Judge Freeman also found the January 2019 survey, which was about crop production and not food labeling, was only "tangentially related to Plaintiff's claims, at best."

Judge Freeman's holding that allegations of survey evidence are insufficient to save otherwise lacking pleadings should come as no surprise; indeed many decisions from within the Ninth Circuit have likewise cited *Becerra* in similar cases for the straightforward proposition that a consumer survey alone cannot rescue an otherwise inadequately-pleaded complaint. The *Yu* case serves as yet another cautionary tale to plaintiffs: when faced with a skeptical court, a consumer survey is not a "get out of Rule 12(b)(6) free" card.

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