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Much A-Brew About Nothing: Court Dismisses False Ad Suit Against Starbucks

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Judge Alison Nathan of the U.S. District Court for the Southern District of New York recently dismissed with prejudice a putative class action alleging Starbucks misrepresented itself as a "premium" coffee retailer. In doing so, the Court found that plaintiffs failed to allege Starbucks made any statements likely to mislead reasonable consumers, and that nearly all of the challenged statements were just puffery. *George v. Starbucks*, (S.D.N.Y. Nov. 19, 2020).

Plaintiffs alleged Starbucks marketed itself as a high-end coffee brand, including claims that it serves "the finest whole bean coffees"; has a reputation for "quality" products; provides a "PERFECT" coffee experience; offers the "Best Coffee for the Best You"; brags that "It's Not Just Coffee. It's Starbucks;" and touts its warm welcoming environment. According to plaintiffs, this was false and misleading because many New York Starbucks locations allegedly are infested with pests and use noxious pesticides to abate these pests. Plaintiffs alleged violations of Sections 349 and 350 of the New York General Business Law, this statute's unfair competition and false advertising provisions.

In dismissing plaintiffs' claims, Judge Nathan found that "[n]early all of the language the customers object to consists of obvious 'puffery'" that no reasonably buyer would take at face value. Plaintiffs argued that the whole of Starbucks's brand messaging was "more than the sum of its parts," pointing to two cases in which courts allowed advertising suits to proceed even where a defendant's ads were not literally false when taken in isolation. However, the court noted that in both those cases, the plaintiffs claimed that defendants' advertising campaign "implied specific, falsifiable facts." By contrast, plaintiffs here did not allege Starbucks's advertising communicated—even indirectly—any specific details about its products. Instead, plaintiffs argued the advertising was misleading because it portrayed Starbucks as providing "premium products made with the best ingredients." However, as Judge Nathan found, claims that a seller's products are "premium" or "the best" cannot support a cause of action for deceptive practices, whether made once or across all of the company's brand messaging.

The court found one statement cited in the amended complaint could, if false, be actionable—that Starbucks baked goods contain "no artificial dyes or flavors." However, the court noted the pesticide mentioned in the complaint was not an "artificial dye or flavor," and no reasonable consumer would understand this statement to convey information about the company's use of pesticides in its stores.

In their amended complaint, plaintiffs alleged that the pesticides Starbucks supposedly uses have manufacturer warnings against use in food service establishments, and the CDC warns that exposure to these pesticides can have serious health effects. However, none of the plaintiffs claimed to have gotten sick. Nor did plaintiffs allege that Starbucks advertised that it did not use these (or any other) pesticides. This case serves as yet another reminder that absent an actionably false or misleading statement, false advertising claims cannot be used to remedy other consumer complaints, and consumer assumptions not grounded in the text of advertising are ripe for dismissal. Watch this space for further development.

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