

Top Dog: Champion Petfoods Wins Dismissal of Dog Food Suit

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Minnesota federal district court Judge Patrick J. Schiltz recently dismissed with prejudice an alleged class action claiming that Champion Petfoods misrepresented the quality of its dog food and ingredients by failing to disclose traces of heavy metals and barbiturates. In dismissing the suit, Judge Schiltz found no reasonable consumer was likely to interpret the contested claims as plaintiffs did, and plaintiffs' attempt to "construct[] a hypothetical 'reasonable consumer' with highly artificial, detailed expectations about a product" did not make their allegations plausible. [*Song & Wertkin, et al. v. Champion Petfoods USA*, No. 18-CV-3205 \(PJS/KMM\) \(D. Minn. Dec. 22, 2020\)](#).

Plaintiffs alleged the advertised claims "Biologically Appropriate"; "Fresh Regional Ingredients"; "Nourish as Nature Intended"; and "Delivering Nutrients Naturally" on Champion's dog food were false and misleading because they did not reflect that the food contained or had a risk of containing heavy metals, BPA, pentobarbital, and non-fresh, non-regional ingredients. The court, however, found it implausible that a reasonable consumer would interpret "Biologically Appropriate" as a guarantee that the food contained no trace of heavy metals whatsoever—especially since the package makes clear that it contains meat and fish. As the court observed, plaintiffs "[did] not dispute that heavy metals occur naturally in meat and fish," and in fact "plead as much" in their complaint, making their allegations all the more implausible. Instead, the court found a reasonable consumer would merely understand "biologically appropriate" to mean the food does not contain ingredients that would make it unfit for a dog to consume. Plaintiffs did not allege this was false. Nor did Plaintiffs allege the food contained heavy metals in amounts that were dangerous (or "biologically inappropriate") for dogs, or that the food harmed their dogs.

The court likewise dispensed with plaintiffs' allegations that reasonable consumers understand "biologically appropriate" to mean Champion's dog food is manufactured in a way that eliminates any risk of BPA contamination. The court noted "biologically appropriate" is clearly a representation about the dog food, not about the processes followed at the manufacturing plant. According to the court, plaintiffs' allegations about how a reasonable consumer would interpret "biologically appropriate" was "an interpretation contrived by lawyers...not an interpretation that would occur to a reasonable consumer as she stood reading a dog food package in the aisle of a pet-food store."

The court also rejected plaintiffs' alleged understanding of the claim "Fresh Regional Ingredients." Citing [Sarr v. BEF](#) and [Harris v. Mondelez Global](#) (two cases we [previously blogged](#) about), the court concluded that a representation highlighting a certain ingredient does not mislead consumers into believing the ingredient has not been mixed with others. In *Sarr*, the court found claims that mashed potatoes were made with "real butter" did not imply that the only fat used was real butter. In *Harris*, the court found claims that cookies were "Made With Real Cocoa" did not suggest the cocoa had not been refined through an alkalization process. Similarly, here, "Fresh Regional Ingredients" did not imply that the dog food was composed *only* of ingredients that were fresh and regional.

The court noted that this was especially true here in light of prominent disclosures on the packaging clarifying that not all of the ingredients are fresh. For example, the court pointed to a large-print panel on the packaging indicating it contained not only ingredients that were fresh, but also ingredients that were raw, dried, and in the form of oils.

Under the same theory, the court found that the term "regional" in this context did not suggest anything more to a reasonable consumer than that the product contained *some* ingredients from regional sources—a statement that was literally true.

This ruling serves as a reminder that the most important factor in assessing allegations of false advertising is often a healthy dose of common sense. Far-fetched interpretations of advertising claims are not sufficient to sustain a false advertising claim. And as the court recognized here, the "reasonable consumer" means the average purchaser standing in a store aisle, not their lawyer.

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