

Judge Wipes Out “Wet Ones” False Advertising Suit

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Judge Todd W. Robinson of the Southern District of California recently dismissed a putative class action against Edgewell Personal Care, the makers of Wet Ones antibacterial hand wipes, alleging it misled consumers by representing Wet Ones kill 99.99 percent of germs and are “hypoallergenic” and “gentle.” In dismissing plaintiff’s claims, the court found no reasonable consumer would take these representations to mean that Wet Ones kill 99.99 percent of *all kinds* of germs (including those not commonly found on hands), or that the hand wipes are *entirely free* of allergens or skin irritants. [*Souter v. Edgewell Personal Care Co.*, No. 20-cv-1486 \(S.D. Cal. June 7, 2021\)](#).

The Wet Ones product label states that the wipes “Kill[] 99.99% of Germs.” Plaintiff alleged this statement is misleading because the wipes’ active ingredient is “ineffective against certain viruses, bacteria, and spores, which comprise more than 0.01 percent of germs and can cause serious diseases.” Specifically, Plaintiff alleged the wipes could not protect consumers from – among other conditions – food-borne illnesses, sexually transmitted diseases, polio, and COVID-19.

The court, however, found “no reasonable consumer would be misled by [these representations] in the way that Plaintiff alleges.” Plaintiff did not explain “how or why a reasonable consumer would believe that a hand wipe would protect against these viruses and diseases.” Indeed, the court found it implausible that a reasonable consumer would believe a hand wipe could protect them against conditions like polio or HPV. Instead, if anything, the court found a reasonable consumer would suspect that a hand wipe would be effective only against bacteria commonly found on hands. Plaintiff’s complaint failed to allege how common it is for the strains of bacteria she identified to appear on hands.

The court was likewise unconvinced that defendant's use of the words "hypoallergenic" and "gentle" was misleading. It found "[n]o reasonable consumer would read 'hypoallergenic' and 'gentle' to mean that [the product] is completely free of ingredients that can cause an allergic reaction." Rather, a reasonable consumer is more likely to interpret the label to mean the product poses a *lower* risk (as opposed to no possible risk) of skin irritation. Furthermore, the court found a reasonable consumer may understand these terms to convey a message about the *effect* of Wet Ones on the skin, rather than a message about its ingredients.

This decision serves as a reminder of the importance of context in determining reasonable consumer takeaway. When plaintiffs ignore context and claim to have taken away an objectively unreasonable message, their complaint is ripe for dismissal.

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