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“Champion” Petfoods: Seventh Circuit Affirms Dismissal of False Advertising Suit Against Pet Food Company

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We recently blogged about Champion Petfoods’ success in a Minnesota district court case alleging that it misrepresented the quality of its dog food and ingredients. Well, Champion Petfoods came back to defend its title in another case involving nearly identical allegations, this time in the Seventh Circuit. The Seventh Circuit recently affirmed a Wisconsin district court decision granting summary judgment in favor of Champion Petfoods. In doing so, the Court sent a loud message to contenders that “summary judgment is the proverbial ‘put up or shut up’ moment in a lawsuit.” Here, plaintiff’s failure to “put up” evidence in support of his claims cost him a shot at trial. *Weaver v. Champion Petfoods USA Inc.*, No. 120-2235 (7th Cir. June 30, 2021).

Champion Petfoods’ packaging touts “biologically appropriate” dog food made with “fresh regional ingredients” prepared in their “award-winning kitchens”—“never outsourced.” Plaintiff alleged these claims were false and misleading because, according to plaintiff: 1) there is a risk that Champion’s dog food contains BPAs and pentobarbital; 2) Champion uses frozen ingredients, regrinds refreshed ingredients, and includes ingredients that are past their expiration date; 3) Champion receives ingredients from international sources like New Zealand, Norway, and Latin America—far away from its Canada and Kentucky kitchens; and 4) Champion purchases ingredients from third-party sources.

The Court, however, found plaintiff’s evidence insufficient to back his claims. In particular, the plaintiff provided neither consumer survey evidence nor expert testimony to support his liability case (though he submitted two expert reports on damages). Instead, plaintiff based his claims entirely on his own testimony. The Court found this was not enough to survive summary judgment.

First, plaintiff's testimony alone was not enough to convince the Court that a reasonable consumer would believe "biologically appropriate" meant *completely* BPA-free, especially given (1) Champion does not add BPA to its dog food, and (2) humans and animals are commonly exposed to BPA. Champion also submitted unrebutted expert testimony that the levels of BPA in its food could not harm a dog. The Court also found plaintiff lacked standing to bring a claim that any dog food he purchased contained pentobarbital, because the sole source of any potential pentobarbital contamination would have come months after plaintiff stopped purchasing Champion's dog food.

Plaintiff's testimony was also insufficient to persuade the Court that a reasonable consumer would be misled into believing that "local and fresh ingredients" means the food contains *exclusively* local and fresh ingredients. The Seventh Circuit quoted the district court's reasoning in *Song v. Champion* (a decision we previously blogged about), that "just as a statement that mashed potatoes are made with 'real butter' does not imply that the *only* fat used is real butter, and just as a statement that graham crackers are made with 'real honey' does not imply that the *only* sweetener used is real honey, so too the statement that a bag of dog food contains 'fresh regional ingredients' does not imply that it is composed *exclusively* of ingredients that are fresh and regional." The Court thus found that Plaintiff's own expectation that the dog food ingredients would come *solely* from regional sources was not enough to prove that other consumers were misled in the same way, especially since Champion never claimed its ingredients were 100% regionally sourced.

This case is a reminder that while class action plaintiffs sometimes are permitted to get away with "because I say so" at the pleading stage, far more is required at summary judgment.

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