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Instant Dismissal: Court Dismisses Instant Oatmeal Case against Whole Foods Market

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Judge Rachel Kovner of the Eastern District of New York recently dismissed a putative class action challenging Whole Foods Market's label claims that its Oats & Flax Instant Oatmeal contains "dehydrated cane juice solids" and is "100 % Whole Grain – 18g or more per serving." Plaintiffs alleged these labels communicate that the oatmeal is sweetened using fruit juice rather than sugar, and that the product consists entirely of whole grains and no other ingredient. In dismissing plaintiffs' claims, the court concluded that no reasonable consumer would be materially misled by these labels. *Warren v. Whole Foods Market Group, Inc.*, No. 19-CV-6448 (E.D.N.Y. Dec. 3, 2021).

In considering the "dehydrated cane juice solids" claim, Judge Kovner determined that plaintiffs offered no reason why a reasonable consumer would conclude that "cane juice" refers to "a fruit juice ingredient as opposed to the common sweetener, sugar." Judge Kovner noted the packaging contains no claims like "contains fruit" or "made with real fruit," nor does the product's name (Oats & Flax Instant Oatmeal) suggest it contains fruit. Further, the court observed the label only speaks of *cane* juice, not *fruit* juice, and juices can come from products besides fruit.

The court also found the reasonable consumer would not be tricked into believing the product is sugar-free or low in sugar. Although consumers may not be familiar with "dehydrated cane juice solids," they would recognize sugar from the nutrition label listing "Sugar 11g." The court also noted that the package lacked any affirmative representations that the product is "sugar-free," "low in sugar," or "without added sugar."

Judge Kovner also rejected plaintiffs' allegation that the "100% Whole Grain – 18g or more per serving" stamp necessarily implies that the product consists *entirely* of whole grains. The court commented that plaintiffs' purported takeaway is "hard to square away with their assertion that they believed, based on the ingredients label, that the product contained 'a fruit juice ingredient.'" Plaintiffs' purported interpretation was also implausible because the stamp in question did not simply say "100% Whole Grain," but added the detail of "18g or more per serving." As a result, the court found the stamp communicated that the whole grain made up a *portion* of each serving of oatmeal, not the whole thing. Moreover, the court highlighted that the product's name itself, Oats & Flax Instant Oatmeal, discloses the presence of "another, nongrain ingredient—flax."

This decision reinforces the importance of considering context and common sense in determining reasonable consumer takeaways. When plaintiffs allege an objectively unreasonable takeaway with no connection to the text of the advertising (or two contradictory takeaways), their claims are ripe for dismissal.

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