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What's in a Word? The Legal Battle over "Natural" in False Advertising

Proskauer on Advertising Law on **June 19, 2024**

While class actions centered around "natural" claims remain popular with the plaintiffs' bar, this past year has seen some growing skepticism from courts towards such lawsuits, particularly where plaintiffs fail to adequately explain what is deceptive about the term.

In January, Judge Kimba M. Wood of the Southern District of New York granted summary judgment to Colgate-Palmolive and its subsidiary Tom's of Maine in a putative class action challenging the use of the term "natural" on Tom's toothpaste and deodorant products. *De Lacour v. Colgate-Palmolive Co.*, No.16-cv-8364 (S.D.N.Y. Jan. 3, 2024). The Court found that the plaintiff's evidence was insufficient to demonstrate that a reasonable consumer would understand "natural" to convey that the challenged products do not contain synthetic and/or highly chemically processed ingredients. The Court dismissed the plaintiff's surveys as "fatally flawed" because they defined "natural" and "artificial" only in relation to each other (i.e., "natural" as meaning "not artificial", and "artificial" as meaning "not natural") and failed to provide respondents with adequate definitions of those otherwise ambiguous terms. Additionally, when asked *what other things* the word "natural" communicated, respondents gave responses as varied as "certified organic," "earthy," "[n]o animal testing, recyclable," "[n]o aluminum," and, "natural." Looking at these surveys and other evidence in the record, including the fact that there is no governmental guidance regarding the use of "natural" labeling on personal care products, the Court found that the evidence demonstrated "that there are many interpretations of the word 'natural,'" and the named plaintiff's subjective interpretation of the term was insufficient to establish evidence of widespread consumer confusion.

Other cases have followed similar reasoning. For instance, in *McGinity v. Proctor & Gamble*, 69 F. 4th 1093 (9th Cir. 2023), consumers sued P&G, alleging that the "Nature Fusion" label on P&G's Pantene Pro-V hair products misled consumers into believing the items were natural, despite containing synthetic ingredients. The district court dismissed the complaint, holding that a reasonable consumer would not be deceived by the label.

The Ninth Circuit affirmed the dismissal, emphasizing the ambiguity of the term “Nature Fusion.” The Court found that this ambiguity was resolved by reading the back label, which clarified that the products contain both natural and synthetic components, rendering the labeling of the product not deceptive as a matter of law.

Given the continued prevalence of lawsuits surrounding “natural” claims, companies should continue to exercise caution in assessing the messages conveyed by such claims in context. However, if courts continue to recognize the potential ambiguity in “natural” claims, as they have increasingly done over the past year, such claims may finally become a less popular target going forward, given their susceptibility to motions to dismiss and the difficulty of certifying a class.

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