Think Twice Before Making ‘All Natural’ Claims

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Food companies should think twice before making “all natural” or “100 percent natural” claims on their product labels. Numerous lawsuits have been filed in the last 24 months alleging that such claims are misleading, and courts have permitted several suits to go forward when products contain artificial ingredients, preservatives or coloring, or where products or their ingredients have been processed with certain solutions. These lawsuits routinely involve products that contain common ingredients, such as artificial trans fats, high-fructose corn syrup and Dutch-process alkalized cocoa.

In many rulings reported so far in these lawsuits, the courts have denied the defendant food companies’ motions to dismiss the plaintiffs’ claims. For example, in *Astiana v. Ben & Jerry’s Homemade Inc.*, the United States District Court for the Northern District of California denied Ben & Jerry’s motion to dismiss the plaintiff’s claims related to Ben & Jerry’s representation that its Ben & Jerry’s and Breyer’s ice cream products were “all natural,” despite the fact that the products contained Dutch-process/alkalized cocoa.

California District Courts have also refused to dismiss claims against Snapple

Beverage Corp. and Hornell Brewing Co. for use of the phrase “all natural” on product labels of beverages containing high-fructose corn syrup. Additionally, in *Henderson v. Gruma Corp.*, the United States District Court for the Central District of California denied Gruma’s motion to dismiss because the plaintiffs’ allegations that the defendant labeled the product “all natural” when it contained artificial trans fats was sufficient to plead claims of unfair and unlawful advertising and business practices.

At least two other courts have taken a different approach, refusing to address the merits of the plaintiff’s claims before first ordering a stay in the action to provide an opportunity for Food and Drug Administration (FDA) input. In *Coyle v. Hornell Brewing Co.* and *Ries v. Hornell Brewing Co.*, the plaintiffs filed suit against Hornell Brewing for labeling beverages “100 percent natural” when the beverages contained high-fructose corn syrup.

The United States District Court for the District of New Jersey and United States District Court for the Northern District of California acknowledged that the FDA has not clearly defined the term “natural,” but has instead addressed whether an ingredient is “natural” on a case-by-case basis. The courts elected to stay the action for a set period of time to allow the FDA an opportunity to address whether high-fructose corn syrup is a natural ingredient.

In another case, *Weiner v. Snapple Beverage Corp.*, the United States District Court for the Southern District of New York granted Snapple Beverage Corp.’s motion for summary judgment on the plaintiffs’ claims arising out of Snapple’s use of the phrase “all natural” to describe a product containing high-fructose corn syrup. In deciding the motion in Snapple’s favor, the court did not determine whether high-fructose corn syrup was “all natural.” Instead, the court found that the plaintiffs had not sufficiently shown that they had suffered injury as a result of the allegedly misleading labels.

In this case, the plaintiffs had alleged that they paid a premium for the “all-natural” products over what would normally be charged for similar products. The court rejected this argument, finding that the plaintiffs had failed to show the existence of any premium.

It is important to note, however, that in many of the cases discussed above, the plaintiffs also alleged that their injuries arose from purchasing the product at all. These plaintiffs alleged that they would not have purchased the product had they known that the product was not “all natural.” Had the plaintiffs in *Weiner v. Snapple Beverage Corp.* proceeded under the same theory, it is possible that Snapple’s motion for summary judgment would not have been granted.

As these lawsuits are very common and have generally not been dismissed during the early stage of litigation, it is clear that making an “all natural” claim on a product label is increasingly risky. Even if the majority of such suits ultimately fail, the litigation will prove costly since so many suits have passed the first threshold. If food companies still strongly desire to utilize an “all natural” claim on their labels, they should be selective and exceedingly careful in determining which products

contain appropriate ingredients that cannot be impugned at all.

What’s your take? Please feel free to comment below! For more information, please contact Pudell via spudell@andersonkill.com *[1] or Donovan via* kdonovan@andersonkill.com *[2].*

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