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Food for Thought: Ninth Circuit Holds Food Manufacturers Can Label Honey as "Honey"

July 08, 2015

Brod v. Sioux Honey Ass'n Cooperative, 609 Fed. App'x. 415 (9th Cir. 2015)

In June 2015, the Ninth Circuit Court of Appeals affirmed a district court's finding that federal law preempts California law to the extent California law prohibits de-pollinated honey from being labeled and sold as "honey." Plaintiffs brought a claim against Sioux Honey Association Cooperative ("Sioux Honey") alleging that Sioux Honey violated California law by selling See Bee Clover Honey, which is de-pollinated, as "honey." The Northern District of California dismissed the action as preempted by federal law. The Federal Food, Drug, and Cosmetic Act, as amended by the Nutrition Labeling and Education Act, preempts state food labeling laws that impose requirements that are "not identical" to federal labeling regulations. 21. U.S.C. § 343-1(a)(3). Under federal law, de-pollinated honey must be labeled with the "common or usual name of the food, if any . . ." because de-pollinated honey is not "a food for which a definition and standard of identity has been prescribed by regulations as provided by section 341" of title 21 of the U.S. Code.The district court decided that the "common or usual name" of de-pollinated honey is "honey," and the Ninth Circuit agreed. In reaching its conclusion, the district court considered dictionary definitions, state standards of identity, and voluntary U.S. Department of Agriculture

regulations. Thus, the court explained that California law prohibits manufacturers from labeling and selling de-pollinated honey as "honey," while federal law requires manufacturers to label de-pollinated honey as "honey." Given the conflict, the Ninth Circuit held that the district court did not err in finding that California's law is preempted. *Read more significant court decisions affecting the food industry in Food for Thought: 2015 Litigation Annual Review.*

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