

Food for Thought: Bishop v. 7-Eleven, Inc.

February 23, 2014

Bishop v. 7-Eleven, Inc., No. 12-02621, 2014 WL 1620946 (N.D. Cal. Apr. 21, 2014)

In *Bishop*, plaintiff attempted to bring a class action against 7-Eleven by alleging that 7-Eleven's package labeling was unlawful, deceptive, and misbranded the potato chips at issue in violation of California law. Specifically, plaintiff claimed that the packaging of several varieties of 7-Eleven Select potato chips was misleading and deceptive where it contained language indicating that the potato chips contained "Og Trans Fat" and "No Cholesterol." The court initially dismissed plaintiff's claims for failure to adhere to Rule 9's requirement of a clear and particular account of the alleged fraud. Given a second attempt to plead his case, plaintiff ultimately failed, and the court dismissed the complaint with prejudice. The court focused on whether plaintiff had sufficiently alleged an injury-in-fact mandated by standing jurisprudence under Article III. This concern was heightened by California law's requirement of establishing an economic loss, by showing that plaintiff (1) spent money due to the unfair competition; (2) lost money or property; or (3) was denied money to which he or she is entitled. Additionally, California courts require the purchase to be the "result of" the deception; this, plaintiff could not establish. The court found that plaintiff failed to plead an injury-in-fact necessary for Article III standing. Because plaintiff could not show a false statement or misrepresentation, there was no actionable claim. And because the lack of disclosure was insufficient to confer standing on plaintiff, the court dismissed the claim with prejudice. Plaintiff based his argument on disclosures that he claimed were mandated by the Food, Drug, and Cosmetic Act but that were missing from 7-Eleven's packaging. These disclosures relate to the amount of fat, saturated fat, cholesterol, or sodium over a threshold level per serving. The court found that plaintiff failed to allege that the product contained an amount of any of these criteria exceeding the threshold level. *Read more significant court decisions affecting the food industry in [Food for Thought: 2014 Litigation Annual Review](#).*

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