

California Supreme Court Endorses More Consumer False Advertising Litigation in Organic Food Decision

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“Labels matter,” the California Supreme Court began its unanimous December 3 opinion. Expect that to be the new rallying cry of plaintiff class action lawyers when suing consumer companies for alleged false advertising. The California Supreme Court held that state law claims of intentional mislabeling produce as organic are not preempted by the Organic Food Act of 1990 (7 U.S.C. §§ 6501-6522). Whether this ruling will be limited to just that federal act or will have broader implications remains to be seen. But the court’s “Labels matter” battle cry will ripple through all consumer class actions. In *Quesada v. Herb Thyme Farms, Inc.*, plaintiff alleges the “Fresh Organic” label is misleading because the packages include herbs processed from both USDA-certified organically processed farms as well as conventional non-organic farms. While the Organic Food Act regulates organic labeling, the California Supreme Court interpreted the Act’s mislabeling sanctions narrowly, finding that because Congress used express language preempting matters relating to organic product processing, but no similar “language of exclusivity” for organic labeling misuses, state law claims and remedies can survive. In fact, the court went a step further by finding such state law claims, promote, rather than hinder, Congress’ intent to

play a more peripheral role in food labeling oversight – a longstanding matter of local concern. Federal preemption has often been a defense to consumer class actions. The weakness of the Organic Food Act in not clearly preempting state law may be unique to that statute. But consumer good manufacturers and distributors should expect more fights over the federal preemption defense. So this new decision opens the door for other state law organic mislabeling claims, and consumer good manufacturers should expect even more litigation over advertising statements—and review their labels with that in mind. Ultimately the U.S. Supreme Court will have the last word.

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