CARLTON FIELDS

Food for Thought: Partial Class Certification of "100% Natural" Cooking Oil Consolidated Action Affects 11 States

March 01, 2015

In re ConAgra Foods, 99 F.Supp. 3d 919 (C.D. Cal. Feb. 23, 2015)

In a consolidated case alleging deceptive and misleading labeling of cooking oil as “100% Natural” although it was made from genetically-modified organisms, the Central District of California granted in part and denied in part plaintiffs’ amended motion for class certification. The court denied plaintiffs' motion to certify an injunctive relief class for failure to show Article III standing. Plaintiffs’ motion to certify damages classes was granted as to classes for California, Colorado, Florida, Illinois, Indiana, Nebraska, New York, Ohio, Oregon, South Dakota, and Texas. Plaintiffs in several consolidated cases allege that from at least June 27, 2007, ConAgra marketed its Wesson brand cooking oils as “100% Natural,” when they were actually made from genetically-modified organisms (GMOs). Plaintiffs, consumers residing in 11 states, claim ConAgra’s marketing was deceptive and misleading because every bottle of Wesson Oil carried a front label stating that the product was “100% Natural.” Plaintiffs sought to certify 11 statewide classes based on violations of state consumer protection laws, breach of express warranty, breach of implied warranty, and unjust enrichment. The case impacts California,

Colorado, Florida, Illinois, Indiana, Nebraska, New York, Ohio, Oregon, South Dakota, and Texas. The court addressed the threshold matter of whether the plaintiffs lacked standing because they suffered no injury. The court held that the data plaintiffs and their damages expert identified provided sufficient "foundational evidence" from which a price premium may be attributed to Wesson oils with the "100% Natural" label. Therefore, the court held the plaintiffs had adequately shown they suffered injury sufficient to confer standing. The court held plaintiffs met their burden of demonstrating numerosity, commonality, typicality, and adequacy. As to ascertainability, the court held that although many class members will not be identified, likely due to the low price of the product at issue, this purported class is ascertainable because its definition specifies objective characteristics of a class member. However, the court held that plaintiffs did not meet Article III's standing requirements for an injunctive class. Specifically, the court found plaintiffs did not proffer evidence of a sufficient likelihood that they would be wronged in a similar way. The court noted that plaintiffs' "equivocal" and "speculative" assertions that they "may consider" or "will consider" purchasing Wesson oils in the future if they are not mislabeled were insufficient to satisfy Article III's standing requirements. Finally, the court analyzed the issue of predominance of class issues versus individual issues. The court noted that the threshold question was "whether each claim sought to be certified under each state requires a showing of reliance and/or causation, and if so, whether such elements may be established on a class wide basis." After a thorough analysis of the applicable law in each state for which class certification was sought, the court held that the consumer protection statutes of each highlighted state either did not require a showing of individualized reliance or that there was an inference of reliance and causation. Therefore, the court granted plaintiffs' motion to certify putative state classes in California (violations of UCL, CLRA, and FAL; and breach of express warranty), Colorado (violation of the CCPA; breach of express warranty; and breach of implied warranty), Florida (violation of FDUTPA), Illinois (violation of the ICFA and unjust enrichment), Indiana (unjust enrichment and breach of implied warranty), Nebraska (unjust enrichment and breach of implied warranty), New York (violation of the GBL and breach of express warranty), Ohio (violation of the OCSPA and unjust enrichment), Oregon (violation of the OUTPA and unjust enrichment), South Dakota (violation of the SDDTPL and unjust enrichment), and Texas (violation of TDTPA). The court denied plaintiffs' motion to certify putative state classes in California (breach of implied warranty), Colorado (unjust enrichment), Florida (unjust enrichment), Indiana (breach of express warranty), Nebraska (breach of express warranty), New York (unjust enrichment), and Texas (unjust enrichment), finding that those claims were not susceptible to classwide proof and that the predominance requirement was not satisfied as to them. *Read more significant court decisions affecting the food industry in Food for Thought: 2015 Litigation Annual Review.*

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