

Food for Thought: Randolph v. J.M. Smucker Co.

February 23, 2015

Randolph v. J.M. Smucker Co., No. 13-CIV-80581, 2014 WL 7330430 (S.D. Fla. Dec. 22, 2014)

Plaintiff commenced an action on behalf of herself and others similarly situated, alleging J.M. Smucker Co. engaged in false, unfair, deceptive and/or misleading trade practices by misrepresenting to consumers that its Crisco oils were “All Natural,” when they were, in fact, made from genetically modified organisms (GMOs) and processed with chemicals. Plaintiff alleged that because of such misrepresentations, she and others similarly situated, were damaged by overpaying for a nonexistent “All Natural” attribute. At the class certification stage, Smucker opposed certification on four grounds: (1) the proposed class was not ascertainable under Rule 23(a); (2) plaintiff could satisfy neither the commonality requirement under Rule 23(a)(2), nor the predominance requirement of 23(b)(3); (3) plaintiff could not satisfy the typicality requirement; and (4) plaintiff had not offered a competent damages model to assess damages on a class-wide basis. As to the first ground, the court held that plaintiff failed to demonstrate that the putative class was ascertainable. The court determined that plaintiff’s objective criteria, “whether an individual purchased a Crisco product containing the alleged misrepresentation ‘All Natural,’” was difficult to ascertain because there were nine different Crisco oils, only four of which contained the challenged statement. Additionally, the challenged statement was not placed uniformly throughout the class period. “Based on these facts, the likelihood that an individual would recall not only which specific kind of oil, but also, when that oil was purchased, complicates identification of the putative class.” The court further reasoned that “taking the aforementioned variations in Crisco products in conjunction with the fact that the challenged product is a low-priced consumer item, of which the normal consumer likely does not retain significant memory about, the likelihood of a potential class member being able to accurately identify themselves as a purchaser of the allegedly deceptive product, is slim.” As a last resort, plaintiff offered an alternative method for ascertaining the class at issue—through retailer records. The court declined to apply this approach because plaintiff had not demonstrated the administrative feasibility of identifying class membership through this avenue. The court disagreed with Smucker on the commonality issue, finding that whether the ‘All Natural’ label is deceptive is an issue common to all class members. In an attempt to satisfy the typicality

requirement, plaintiff asserted the existence of a single misrepresentation: Crisco oils are not “All Natural,” despite being labeled as such. Smucker argued that plaintiff’s definition of “natural” was atypical and idiosyncratic. The court disagreed, noting that the Food and Drug Administration has repeatedly declined to adopt a formal rule that would define the term “natural.” In the court’s view, the fact that plaintiff’s definition of “All Natural” may differ from that of other class members was insufficient to defeat the typicality requirement. On predominance, Smucker argued that the lack of consensus surrounding the definition of “natural” and the fact that the product, cooking oil, is used to cook or bake, rather than consumed directly, made it difficult to determine whether the inclusion of “All Natural” on the label would be deceptive to the reasonable consumer on an objective, non-individualized basis. The court concluded plaintiff had not demonstrated that an objectively reasonable consumer would agree with her interpretation of “All Natural” (especially since the majority of defendant’s products did not bear the challenged labeling during the class period), thus predominant issues succumbed to individualized issues of fact. Lastly, the court rejected plaintiff’s argument that damages could be calculated through a hedonic regression. The court reasoned that “a plaintiff must actually demonstrate, through evidentiary proof, that class-wide damages are capable of measurement, not simply assert that it is so” and concluded that plaintiff failed to satisfy this requirement. *Read more significant court decisions affecting the food industry in [Food for Thought: 2014 Litigation Annual Review](#).*

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