

Food for Thought: Whole Foods Wins Dismissal of PETA's Lawsuit Over Company's Claims About How Meat is Raised

April 26, 2016

PETA v. Whole Foods Mkt. Cal., Inc., No. 15-4301, 2016 U.S. Dist. LEXIS 55601, (N.D. Cal., April 26, 2016)

Plaintiffs in this putative class action alleged that defendants Whole Foods Market Services, Inc., Whole Foods Market California, Inc., and Mrs. Gooch's Natural Food Markets, Inc., fraudulently marketed meat sold in their stores. People for the Ethical Treatment of Animals, Inc. (PETA), an international animal protection organization, and Lori Grass, a California citizen, together sought to represent a class of consumers who purchased Whole Foods' meat products during a four-year period. Specifically, plaintiffs claimed that defendants fraudulently enticed consumers to pay a premium price on its meat products by advertising them as a "more humanely treated, higher quality animal product" in violation of California's Unfair Competition Law (UCL), Consumers Legal Remedies Act (CLRA), and False Advertising Law (FAL). Plaintiffs alleged that the meat section of each of the defendant's retail stores advertises and promotes information about a "Global Animal Partnership 5-Step Rating System." Global Animal Partnership (GAP) is a non-profit organization that rates animal welfare using numerical ratings approved by the federal Food and Safety Inspection Service (FSIS). According to the plaintiffs, GAP received its initial funding from defendants, currently receives a majority of its funding from defendants, and has a board that includes current and former executives from defendant companies. Plaintiffs argued that the GAP rating is a "sham" that is not enforced, that the advertising does not adequately disclose that the treatment standards under the GAP rating "are no better or marginally better than is the common industry practice." The court previously dismissed plaintiffs' second amended complaint because it did not contain sufficient information to allege fraud with specificity as required by Federal Rule of Civil Procedure 9(b) and because plaintiffs failed to distinguish between in-store advertisements subject to California's consumer protection law and on-package labels that are federally approved and can only be challenged under federal law. Defendants' motion to dismiss challenged plaintiffs' third amended

complaint in its entirety. The court held that plaintiffs' third amended complaint did satisfy the heightened pleading standards of Rule 9(b) because plaintiffs adequately distinguished defendants' signage (including in-store signs, placards, and napkins) from federally approved labels on the meat packages. Similarly, the court did not reach the preemption question because plaintiffs' third amended complaint focused on advertising separate from the GAP rating labels approved by the FSIS. However, the court held that plaintiffs' third amended complaint failed to allege actionable affirmative misrepresentations by defendants on the signage and napkins. Defendants argued, and plaintiffs conceded, that many of the statements were not factually untrue (e.g., "No Cages" or "Healthy Animals"). Instead, plaintiffs argued that defendants used signs and napkins to describe the GAP rating system and create the impression that defendants' standards ensured superior treatment of animals, resulting in superior meat quality. But the court sided with defendants and held that statements such as "Great-Tasting Meat From Healthy Animals" and "Raised Right Tastes Right," are not actionable statements of fact because there are no quantifiable, objective standards. Essentially, the court found those statements to be "taste representations that are not quantifiable" and, therefore, "non-actionable puffery." Similarly, the court rejected plaintiffs' contentions that defendants' statements were actionable omissions. Plaintiffs claimed that defendants had a "duty to disclose that the audit process is a sham and that key standards merely meet minimum industry practice." The court held that retailers do not owe a duty to disclose product information unless it relates to consumer safety. Because plaintiffs did not allege a consumer safety issue, their claim of actionable omission failed.

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