

Food for Thought: Ninth Circuit: Food Manufacturers May be Liable for Misleading Consumers if They Label Foods Containing Synthetic Citric and Ascorbic Acid “Natural”

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On September 30, the Ninth Circuit Court of Appeals reversed in part a district court decision granting summary judgment to Dole Packaged Foods LLC, finding that a reasonable fact finder could conclude that Dole’s description of its products as “All Natural Fruit” is misleading to a reasonable consumer. Plaintiff Chad Brazil, on behalf of a class of consumers, brought suit against Dole under several California statutes, the California Unfair Competition Law, the California False Advertising Law, and the California Consumer Legal Remedies Act, alleging that Dole’s labels are deceptive because they describe packaged fruit as “All Natural Fruit,” despite the fact that the products contain synthetic citric and ascorbic acid. To prove the label is misleading, Brazil said his evidence would include the label itself, his own testimony that he was deceived, Dole’s consumer surveys prepared for the litigation, and the federal Food and Drug Administration’s (FDA) policy on the use of the word “natural” in food labels. The FDA has defined “natural” to mean “nothing artificial or synthetic...has been included in, or has been added to, a food that would not normally expected to be in the food.” Brazil also cited recent FDA warning letters to food sellers who described their products as “100% Natural” or “All Natural,” stating that those descriptions were deceptive because the products used synthetic citric acid and other substances. The court concluded that, taken together, this evidence could allow a jury to find that Dole’s description of its products as “All Natural Fruit” is misleading to a reasonable consumer, and the synthetic citric and ascorbic acids in Dole’s products were not “natural.” Therefore, the court reversed summary judgment on the issue of whether Dole’s

label was misleading. Regarding the other claims raised, the court affirmed the dismissal of Brazil's claim for the sale of "illegal products," because Brazil did not see the statements that allegedly made the sale illegal before he purchased the fruit and therefore did not rely on them. The court also affirmed that damages are limited to the difference between the prices customers paid and the value of the fruit they bought, explaining that a plaintiff cannot be awarded a full refund unless the product she purchased was worthless, which Dole's fruit was not. In addition, the court upheld the district court's decision decertifying the class, because Brazil did not show that he could calculate damages on a class-wide basis, although his individual claim stands. *Brazil v. Dole Packaged Food, LLC*, No. 5:12-cv-01831 (9th Cir., Sep. 30, 2016)

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