

Conflict Within the Southern District of Florida: Should the Primary Jurisdiction Doctrine Be Applied to Stay Class Actions Relating to CBD?

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Judge Robert Scola refused to apply the primary jurisdiction doctrine to stay a class action based on the alleged misrepresentation of the amount of CBD in products sold by Diamond CBD, diverging from Judge Ursula Ungaro's recent decision in *Snyder v. Green Roads of Florida LLC* on the same issue.

In *Potter v. Potnetwork Holdings Inc.*, the plaintiff filed a class action lawsuit raising unjust enrichment, Florida Deceptive and Unfair Trade Practices Act, and breach of express warranty claims premised on the allegation that a number of products sold by Diamond CBD contain a "significantly lower amount of CBD than represented." In accordance with Judge Ungaro's ruling in *Snyder*, Judge Scola dismissed the claims raised by the plaintiff related to products she had not bought, finding that she had not suffered an injury in fact with regard to those products and therefore lacked standing to bring those claims. Judge Scola also agreed with Judge Ungaro in holding that the plaintiff could not obtain injunctive relief because she had not alleged that she was likely to suffer an injury in the future but rather that her allegations made it clear that she would not continue to purchase the products and therefore would not be injured. The two further agreed in their refusal to dismiss the plaintiff's FDUTPA and unjust enrichment claims.

The harmony ended, however, when the judges arrived at the defendants' motions to stay based on the primary jurisdiction doctrine. As described in our [prior article](#), Judge Ungaro found that the claims raised by the plaintiff in *Snyder* implicated the doctrine and issued the stay. Judge Scola saw things differently. While recognizing that the Food and Drug Administration "is currently crafting regulations to govern CBD products," and further that the "FDA also is under pressure from

Congress to expedite the rulemaking process,” he agreed with the plaintiff that “the forthcoming regulations will likely not have any effect on the issues in this case.”

While the FDA is “eager” to determine a number of issues regarding the safety of CBD products, the “FDA has not expressed interest in modifying the disclosure requirements for nutrients or additives,” nor had the defendants pointed to any proposed regulation that may affect the specific food labeling requirements implicated by this case. As a result, Judge Scola refused to issue a stay based on the primary jurisdiction doctrine, in contrast with Judge Ungaro’s ruling in *Snyder*.

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