

Food for Thought: Ninth Circuit Holds Cosmetic Labeling Claims Not Preempted by FDCA, Primary Jurisdiction Appropriately Invoked

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Astiana v. The Hain Celestial Group, Inc., 783 F.3d 753, (9th Cir. April 10, 2015)



In April 2015, the Ninth Circuit held in a cosmetic labeling class action that the Food, Drug, and Cosmetic Act (FDCA) did not expressly preempt state causes of action predicated on federal cosmetics labeling laws and that the primary jurisdiction doctrine was appropriately invoked by the district court. In *Astiana v. Hain Celestial Group, et al.*, a group of consumers brought a putative nationwide class action against cosmetic products manufacturers Hain Celestial Group and JASON Natural Products (Hain) alleging that the manufacturers’ use of the word “natural” on its products was false and misleading. Hain moved to dismiss plaintiffs’ state law claims asserting that they are preempted by the FDCA. Alternatively, Hain argued that the action should be stayed or dismissed under the primary jurisdiction doctrine. The Northern District granted the motion to dismiss and plaintiffs appealed. Judge McKeown wrote for the Ninth Circuit.

The opening lines of the opinion made it clear where Judge McKeown stands on “all natural” labels on cosmetic products:

A product labeled “all natural” or “pure natural” likely evokes images of ground herbs and earth extracts rather than chemicals such as “Polysorbate 20” or “Hydroxycitronellal.” This class action alleges that false or misleading product labels duped consumers seeking natural cosmetics into purchasing products that were chock-full of artificial and synthetic ingredients. Although the underlying question of what constitutes a “natural” cosmetic poses a fascinating question, it is not the one we answer.

Judge McKeown then turned to the main issues on appeal: (1) whether federal preemption prevents the district court from deciding when a “natural” label on cosmetic products is false or misleading and (2) whether the primary jurisdiction doctrine prevents the district court from deciding when a “natural” label on cosmetic products is false or misleading.

Preemption

With regard to preemption, the court held that the FDCA does not expressly preempt state causes of action predicated on federal cosmetic labeling laws. The FDCA proscribes any cosmetics labeling that is “false or misleading in any particular.” The more specific preemption language prohibits any state or local government from “establish[ing] or continu[ing] in effect any requirement for labeling or packaging of cosmetics that is different from or in addition to, or that is otherwise not identical with” federal rules.

Citing Supreme Court precedent in *Medtronic, Inc v. Lohr* and *Bates v. Dow Agrosciences LLC*, the court explained that the FDCA bars states from imposing new or additional labeling requirements. However, the FDCA is silent with regard to states' ability to provide remedies for violations of federal law. Because the language of the FDCA is "virtually identical" to the statutory text at issue in *Lohr* and *Bates*, the court concluded that the FDCA does not preempt state laws that allow consumers to sue cosmetics manufacturers that label or package their products in violation of federal standards.

Primary Jurisdiction

Next, the court addressed the issue of whether the district court properly dismissed plaintiffs' claims under the primary jurisdiction doctrine. The court held that the district court properly invoked primary jurisdiction, but it erred by dismissing the case without prejudice rather than staying proceedings while the parties (or the district court) sought guidance from the FDA.

Primary jurisdiction is a prudential doctrine that permits courts to determine that an otherwise cognizable claim implicates technical and policy questions that should be addressed in the first instance by the agency with regulatory authority over the relevant industry, rather than the judicial branch. In evaluating primary jurisdiction, the court considers the need to resolve an issue that has been placed by Congress within the jurisdiction of an administrative body's regulatory authority pursuant to a statute that subjects an industry or activity to a comprehensive regulatory authority that requires expertise or uniformity in administration.

Not all cases that implicate the expertise of federal agencies warrant invocation of primary jurisdiction. Rather, the doctrine is reserved for a limited set of circumstances that require resolution of an issue of first impression, or of a particularly complicated issue that Congress committed to a regulatory agency. The court determined that "[W]ithout a doubt, defining what is "natural" for cosmetics labeling is both an area within the FDA's expertise and a question not yet addressed by the agency."

Nonetheless, the court explained that the action should have been stayed instead of dismissed because the Ninth Circuit has not clearly adopted the doctrine of equitable tolling in primary jurisdiction cases. Staying the action prevents the statute of limitations from running during administrative proceedings that could affect the parties' rights.

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