

8th Circuit Court of Appeals Rules False Advertising Allegations Regarding Organic Claims Are Not Preempted by Organic Foods Production Act of 1990

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The U.S. 8th Circuit Court of Appeals recently ruled that certain false advertising claims based on state consumer protection and anti-deception statutes were not preempted by the Organic Foods Production Act of 1990 (OFPA)— a federal Act that establishes national standards for the sale and labeling of organically produced agricultural products, and creates a certification program through which agricultural products may be certified to produce organic products. The court reversed and remanded the district court’s ruling that the false advertising claims were preempted by the OFPA, holding that, while claims challenging certification of a product as organic (e.g., alleging that a defendant’s products are falsely represented as organic when in fact the products were not organic), are preempted by the OFPA, false advertising claims challenging the facts underlying an organic certification (e.g., alleging that a defendant’s advertisements “misrepresent[] the manner in which its dairy cows were raised and fed,” and “suppress[] or omit[] material facts regarding the production of its ‘organic’ milk or milk products, specifically that . . . the dairy cows were not raised at pasture”) are not preempted by the OFPA.

As background, following a 2007 consent agreement between USDA and Aurora Dairy Corporation (Aurora) regarding Aurora’s violations of the OFPA and related implementing regulations, known as the National Organic Program (NOP), nineteen class action lawsuits were brought in federal district courts on behalf of organic milk consumers (class plaintiffs) against Aurora and various retailers, claiming violations of state law arising from Aurora’s alleged failure to comply with the OFPA and the NOP. The U.S. Judicial Panel on Multi-District Litigation (JPMDL) consolidated these cases in the Eastern District of Missouri. In June 2009, the Eastern District court dismissed the case, finding the OFPA preempted all of the class plaintiffs claims.

The 8th Circuit’s decision distinguishes between “state law challenges to [organic] certification determination, itself, which conflict with the OFPA, and state law challenges to the facts underlying certification,” taking the position that state law “challenges to the underlying facts do not necessarily conflict with the OFPA’s purposes,” in a manner justifying preemption of such claims. A copy of the 8th Circuit’s decision is available [here](#).