Sugar Content Representations Not Misleading When Ingredient Panel Provides Accurate Disclosures, Eastern District of New York Court Finds

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Lawsuits challenging the advertising and labeling of sugar content – and corresponding representations that a food product may be healthy or wholesome – have become ubiquitous in the class action world. Yet, a growing number of courts are rejecting such claims when the product's nutritional label accurately reflects the correct sugar amount in a manner that does not deceive consumers.

In late March, a proposed class action filed against One Brands LLC was dismissed with prejudice, with the court determining that the defendant did not deceive consumers about the sugar content in its energy bar products. In *Melendez v. One Brands, LLC*, 1:18-cv-06650 (E.D.N.Y.), the plaintiff contended that One Brands' labeling and marketing of two of its nutrition bar product lines – ONE Bar and ONE Basix – was misleading because the front label contained the brand name "ONE," which refers to the bars' one gram of sugar.

Plaintiff asserted that independent laboratory testing determined that the bars actually contained 5.2 grams of sugar, rather than the advertised one gram. According to plaintiff, the misleading advertising was particularly important to consumers looking for healthier or diet-based options and also resulted in the bars being sold at a premium price.

The plaintiff asserted two different theories under New York state law: (1) the advertising was actually false, and (2) regardless of whether the "one" gram of sugar statement was actually false, it was still misleading as it deceived reasonable consumers into believing the bars offer lower calories and carbohydrates than competing brands.

U.S. District Judge Carol Bagley Amon rejected each of these arguments under NY General Business Law (GBL) §§ 349 and 350 and related common law theories.

The Court agreed with One Brands that the falsity claim was preempted by federal law. In order to escape federal preemption, the Court ruled that a plaintiff must comply with FDA's procedures, which require that testing be based on 12 sub-samples of the product and analyzed by specific reliable and appropriate procedures. Plaintiff's testing failed to comply with this methodology, and therefore his claims were preempted.

The Court also found that the “one gram sugar” statement on the ONE Bars’ front label was not likely to mislead a reasonable consumer into believing that the bars are lower in carbohydrates and calories than they actually are, because the back panel of the bars’ packaging serves to clarify any potential ambiguity on the front label. Because the products’ carbohydrate and caloric contents are contained in the mandatory nutrition facts panel – which is “exactly the spot consumers are trained to look” for such information –the court found that plaintiff failed to sufficiently plead the misleading claim under New York GBL §§ 349 and 350.

The Northern District of California recently reached a similar result in a case against General Mills, reasoning that consumers could not be deceived by the sugar content in Honey Nut Cheerios because “all truthful and required objective facts” were disclosed on the product’s side panel of ingredients, and that individual consumers must reach their own conclusions about how much sugar is “healthy” for them to consume.

Advertisers should remain keenly aware of the growing number of class action lawsuits involving health and nutrition claims, and remember that, while an accurate nutrition facts panel cannot “cure” a false or misleading claim found elsewhere on the package, it can contribute to a finding that the overall package is not misleading to reasonable consumers and can support dismissal – even at the pleadings stage – in appropriate cases.