

Court Finds Target "Clean"-Washing Complaint Will Move Forward

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Last week, a federal court in the District of Minnesota struck down Target's motion to dismiss a class action complaint against the company for its "Target Clean" line of beauty products, because the Court said it could not declare as a matter of law that the Target Clean program is incapable of deceiving a reasonable consumer. As the court put it, "the reasonableness of Plaintiffs' expectations remains up for strenuous debate."

Target's Clean line designates beauty products that are free from 13 "commonly unwanted chemicals or ingredients," which include parabens, phthalates, and formaldehyde, among others. In stores and online, Target uses a green "Clean" symbol with Target's signature bullseye to identify the products within this clean category.

The premise of the lawsuit is that the products were not as "clean" as advertised; to the contrary, the Complaint alleges that some of the products actually contain the banned ingredients, or others may substitute products that may be *more* harmful than the banned ingredients. In fact according to the Complaint, at least some of the products that are under this Target Clean category have not been similarly identified by the manufacturer that the product is clean or safer than other products. On this theory, the class brought a plethora of claims on behalf of a nationwide and multi-state class.

The Court acknowledged that this is not a typical products case. Indeed, by curating a list of products and calling them "Target Clean," the Court said this "suggests that Target has done some work on [consumers'] behalf" and "the Court can imagine that a consumer might reasonably assume that Target had independently made an assessment that some of its products are cleaner than others in a way that is meaningful to consumers."

The Court specifically reasoned that while claims made on product labeling could be "immediately verified or at least scrutinized," the gravamen of the Complaint is that Target essentially "used an imprimatur of authority, as a *retailer*, to point health conscious consumers toward purchasing certain products," creating a higher expectation that the products are safer and healthier. Based on this elevated expectation, the Court found that the "clean" claims may not be limited to the 13 banned ingredients enumerated but to the nature of the products generally.

Importantly, Target pointed out that some plaintiffs never alleged that they relied on specific statements of banned ingredients on the products, only that they generally relied on "Target Clean" labeling. But this too was not enough: because the "Target Clean" line could itself be deceptive, relying on those curated products to make a purchase was alone sufficient even without any reliance on any specific statements on the labels.

As we've discussed in previous posts, "clean" is not defined in regulations, which means that each brand or retailer must explain to consumers how it's defined within that brand. In a recent lawsuit against Sephora for its clean line of beauty products, which we discussed [here](#), the Court found that it is only necessary to consider whether the products included any of the ingredients that Sephora claimed the products did not contain. Because that wasn't the case, the court dismissed the false advertising claim. This Target decision muddies the waters now, with a finding that a reasonable consumer's perception may go beyond the specific claims that they saw or that the retailer itself even conveyed.

We'll have to wait and see if Target ultimately prevails on its "Target Clean" campaign, but this case nonetheless signals caution to marketers who may attempt a similar curated line of "clean" beauty products.