

Court Rejects As Speculative Putative Class Action Complaint Alleging “V’nilla Almond” Granola Is Not Flavored Exclusively From Vanilla Beans

Robert N. Ward, Jaclyn M. Metzinger

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A California federal judge has dismissed a putative class action against Kellogg for failing to back up the plaintiff’s theory that Kellogg’s Bear Naked Granola V’nilla Almond does not include vanilla flavoring derived exclusively from vanilla beans.

The plaintiff challenged the labeling of Bear Naked Granola V’nilla Almond as deceptive, claiming that the product’s labeling leads consumers to believe it contains vanilla flavor derived exclusively from vanilla beans when it actually does not. To support the theory that consumers believe the product’s vanilla flavoring is derived exclusively from vanilla beans, the plaintiff relied on the use of the word “V’nilla” in the product’s name, the front of the product’s label displaying “naturally flavored” immediately below the words “V’nilla Almond,” and the back of the label depicting a vignette of a vanilla plant with only the word “Vanilla” below the vignette. As to the allegation that the product’s vanilla flavoring was not derived exclusively from vanilla beans, the plaintiff claimed that, because vanilla is an unusually expensive and in-demand ingredient, Kellogg would be incentivized to list it as an ingredient but did not—instead listing “natural flavors.” Therefore, the plaintiff maintained, Kellogg’s “listing of ‘natural flavors’ as opposed to vanilla flavor or vanilla extract is tacit acknowledgment that the ‘natural flavors’ is not a synonym for the required vanilla ingredients.” “In other words,” the court explained, “the omission is the admission.”

The court rejected this admission-by-omission theory as merely speculative. It explained that the plaintiff “provides no factual basis for this argument other than the lack of vanilla’s inclusion on the ingredients list.” The court emphasized that the plaintiff did not allege what else might be in the product other than flavoring derived from vanilla beans. The plaintiff’s speculation, the court concluded, was insufficient to “nudge [his] claims . . . across the line from conceivable to plausible.” The court granted the plaintiff leave to amend.

The decision is *Zaback v. Kellogg Sales Co.*, No. 320CV00268BENMSB, 2020 WL 3414656 (S.D. Cal. June 22, 2020), and is a noteworthy decision drawing the distinction between speculative and plausible in one of the numerous vanilla flavor-based actions filed over the past year. For example, in *Figueroa v. Trader Joe’s Co.*, No. 20-cv-322 (E. D. NY.), Trader Joe’s is facing a putative class action for allegedly misleadingly labeling its Just the Clusters Vanilla Almond Granola Cereal to lead consumers to believe that vanilla is the product’s exclusive flavoring ingredient when, according to

the complaint, the product's ingredients list shows that the cereal contains "Natural Flavor" instead of vanilla.

We will continue monitoring this wave of flavoring litigation and its effect on the food and beverage industry.

