

“Local” Means Something, but What?

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The “local” food movement is growing, as many consumers attempt to find fresher options, support local businesses, and reduce the environmental impact of shipping foods over longer distances. One problem, though, is that no one is quite sure what “local” means. As with the word “natural” – [another word without a clear meaning](#) – this ambiguity creates some risk for companies that want to advertise that something is “local.”

Bimbo Bakeries filed a lawsuit against a competitor with various claims, including trade secrets misappropriation, false designation of origin, and false advertising.



Among all of those things was a “local” claim. Bimbo argued that U.S. Bakery’s “Fresh. Local. Quality.” tagline was false in Utah because U.S. Bakery neither maintained a baking facility in Utah nor contracted with a Utah facility to manufacture its products. U.S. Bakery filed for summary judgement, arguing (among other things) that the word “local” falls “within the category of non-actionable words because the term is vague and not measurable and is therefore merely an opinion.”

The court disagreed. In many cases, the analysis of whether a company has made a false designation of origin under the Lanham Act is easy. (For example, using “Idaho Potatoes” to describe potatoes grown outside of that state would be a problem.) In this case, the analysis was harder because the term “local” is less precise. Indeed, in a 2010 report, the USDA noted that although “local” has “a geographic connotation, there is no consensus on a definition in terms of the distance between production and consumption.” In this case, Bimbo provided surveys showing that the tagline was misleading and material to potential purchasers. “Because the term local does not carry a set definition,” the court determined that “whether the term is false or misleading is a question appropriate for the fact finder” and denied summary judgement.

Earlier this month, a jury determined that US Bakery had “engaged in false advertising by using the words ‘Fresh. Local. Quality.’ in connection with the advertising and promotion of its products.” The jury attributed over \$8 million in profits to the false advertising and awarded over \$2 million in total damages (including the trade secret claims). Because the Special Verdict form simply asked for “Yes” or “No” responses, we don’t have any insights into the analysis or a clear answer as to what

“local” means.

This case may raise more questions than answers, but it suggests that companies need to think carefully before claiming that a food – or any other product – is “local,” especially if that word will be used in a state in which the product isn’t made or grown.