

# Missing Ingredient Claims Lead Food Advertising Class Actions So Far in 2017

July 19, 2017

For the first 28 weeks of 2017, the most frequently alleged claims in new food and beverage false-advertising class actions have related to featured product ingredients that allegedly are absent, or present only in small quantities, in the food at issue.

We reviewed news reports and other mentions of newly-filed food advertising class actions for the first part of 2017 and tabulated the central cause or causes of action to learn where the current substantive focus is in these cases. Out of 52 new food advertising class actions reported between January 1 and July 15 as having been newly filed, the largest single category – 12 cases – alleged the absence of an ingredient that was featured on the product’s label and/or marketing. Three of the suits concerned truffle-infused cooking oils, alleging that these products actually contained no truffles. Two cases were filed against makers of ginger ales, which the suits alleged contained no ginger. Single cases alleged that a guacamole contained very little avocado, that coconut water contained no coconut, that veggie snacks contained no vegetables, that canned octopus was really squid, and that “steak” in a sandwich was really non-steak ground beef.

The other major categories reflect the types of food advertising claims that have been much in the news in recent months. Nine cases concerned “natural” claims. Nine cases objected to “no sugar added” or similar claims, generally on the basis that evaporated cane juice allegedly was not characterized as a sugar. Seven cases concerned slack fill, and a further four cases alleged underfill (i.e., not that there was empty space in the package, but that the actual weight of product was less than the stated weight). Five cases accused the food of overstating its healthiness, and a further three charged that the product falsely claimed a nutritional benefit. Four cases alleged that an undesirable ingredient claimed *not* to be in the product, such as trans fat or preservatives, actually was present.

The accompanying chart shows the 52 actions broken down into categories of claims asserted. The total assertions amount to more than 52 because some cases asserted more than one type of claim.



Based on this analysis of 2017 thus far, the two takeaways for food manufacturers are (1)

advertising class actions are alive and well and remain a threat, and (2) manufacturers should pay close critical attention to the accurate characterizing of their ingredients. Other well-known controversies over hot-button issues like “natural” claims, slack fill, and the treatment of evaporated cane juice continue to play out in the courts and to be the subject of new challenges.

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