

“Natural” Class Action Against Dietary Supplements

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Compared to conventional foods, which have been barraged with class action suits over “natural” claims, dietary supplements have not been hard hit. Late last month, however, a plaintiff filed suit against Hammer Nutrition, Ltd. over “natural” claims and other claims used to promote two of the company’s dietary supplements.

The plaintiff filed suit in federal court in New York challenging claims used to promote Appestat, a weight loss product, and Perpetuem, a powder that Hammer Nutrition describes as “endurance fuel for long distances.” The plaintiff argues in his complaint that “all natural” claims for both products are deceptive given the presence of ingredients such as magnesium stearate, zinc monomethionine, and chromium polynicotinate. The plaintiff further argues that the Appestat labeling and advertising is deceptive in that it fails to disclose the presence of caffeine and promotes garcinia cambogia as safe and effective for weight loss and appetite suppression. The plaintiff seeks to create a class of New York consumers and alleges that the products’ advertising and labeling violate New York consumer protection statutes and common law.

In order to cobble together evidence that the “non-natural” product ingredients he identifies render Hammer Nutrition’s “all natural” claims deceptive, the plaintiff points to an FDA policy on “natural” claims for foods and USDA rules that identify some ingredients and classes of ingredients as synthetic for the purposes of “organic” claims for agricultural products. While some courts have been persuaded by similar arguments in past cases on “natural” claims for foods, courts in recent months have been more wary. Two courts, for instance, have found that the FDA policy is *not* legally binding; that regulations governing “organic” claims are irrelevant to “natural” claims; and that, in general, a broad, uniform understanding of what “natural” means is lacking when the term is used to describe manufactured products. (See more on recent cases [here](#).)

The plaintiff’s complaint includes broad, incendiary language about the dietary supplement industry that is, at best, misinformed and, at worst, disingenuous. The complaint states that the dietary supplement industry “is largely unregulated” given that FDA focuses primarily on matters directly affecting public health and safety. It further suggests that consumer class actions are the *only* means of protecting against false advertising in the dietary supplement industry. The complaint conveniently fails to mention the FTC’s extensive track record of bringing enforcement actions against dietary supplement companies over labeling and advertising claims. The plaintiff’s law firm that is working on the case appears to focus on class actions involving cellphones and appliances; this case may be its first action against a food or dietary supplement company.