

“Prime Pork” Grading Claims Dismissed by Federal Judge In Florida

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A federal judge in Florida recently [dismissed](#) a false advertising case against Tyson Fresh Meats and The Fresh Market challenging the use of the word “prime” to describe Tyson’s “Chairman’s Reserve Prime Pork.” Specifically, the plaintiffs alleged that the defendants “misrepresented that the USDA had graded their product as prime,” but notably did *not* allege that the product was not of prime quality.

The [USDA grades meat products differently](#). For example, [beef](#) is graded as “prime,” “choice,” or “select,” which is notably displayed on the package through capital letters placed inside of a brightly colored shield. Similarly, chicken and other poultry graded by the USDA are stamped with a “USDA Grade A” shield. The USDA does not grade pork, however, and there was no USDA grade shield on the packaging of the product at issue to suggest otherwise.

Nevertheless, the plaintiffs alleged that the use of the word “prime” in Tyson’s “Chairman’s Reserve Prime Pork” tricked consumers into believing that they were purchasing meat that had been graded as “prime” by the USDA. The court dismissed the plaintiffs’ complaint in its entirety, finding it “implausible” that a reasonable consumer who was familiar enough with the USDA grading process for beef to “simultaneously be ignorant of the fact that the USDA does not grade pork.” This was especially true given that the term “USDA” did not appear anywhere on the pork’s packaging. As the court held, a “reasonable consumer sufficiently familiar with USDA grading would note the absence of the term.” With this in mind, the court found the use of the word “prime” to be non-actionable puffery and dismissed the complaint with prejudice.

False advertising class actions like this one are extremely costly to defend, and this decision demonstrates that, despite popular belief, courts are (sometimes) willing to dismiss frivolous claims early and before defendants are forced into choosing between lengthy discovery or a quick settlement. This decision and others like it will hopefully dissuade the plaintiffs’ bar from taking truthful and non-misleading advertising language out of context in an effort to create a false advertising claim where none exists.