

# SDNY Relies on “Simple Reading” of Label to Dismiss False Advertising Claim

Jaclyn M. Metzinger, Caitlin R. Hickey

September 21, 2020

Last week, a federal judge in the Southern District of New York dismissed a putative class action alleging that L’Oreal’s “EverSleek Keratin Caring” hair products deceived consumers into believing the products contained keratin. United States District Court Judge George B. Daniels rejected these allegations, finding that the challenged statements were clear both on their own and when read in context of the entire label.

Judge Daniels analyzed all of the Plaintiff’s claims (which included breach of warranty, fraud, and violations of several consumer protection statutes) under the “reasonable consumer” standard. He relied on three aspects of the “EverSleek Keratin Caring” labels to conclude that reasonable consumers would not interpret the labels in the same way manner that the Plaintiff alleged.

First, both the front and back of the labels stated that the products were 100% vegan. Given that the Plaintiff affirmatively alleged that keratin was “a protein naturally present in human hair, skin and nails,” the Court found that it was not reasonable for her to assume that a vegan product would contain keratin.

Second, the ingredient lists on the product labels did not include keratin. As the Second Circuit has previously held, it is unreasonable to assume that a product contains an ingredient when that ingredient is not included in the ingredient list. *See Jessani v. Monini N. Am., Inc.*, 744 Fed. App’x 18, 19 (2d Cir. 2018). (finding that “truffle flavored” olive oil did not deceive consumers into believing that the product contained truffles, especially where the ingredient list did not include truffles).

Finally, the labels repeatedly stated that the products are “Kertain Caring,” and the product description itself stated that the “EverSleek Keratin Caring system with sunflower oil, gently cleanses chemically straightened hair *while caring for the essential protein and keratin that is found in hair*” (emphasis in the opinion). The Court ruled that these statements, “read in conjunction with the fact that the ingredient list is extremely clear, leads to the conclusion that Plaintiff has therefore not met the burden of demonstrating that a reasonable consumer could find that the Products claim to contain keratin.” The Complaint was dismissed in its entirety.

As Judge Daniels aptly noted, “a simple reading of the label would have resolved” the Plaintiff’s issues. This is good news for companies that have been plagued by these types of suits, and shows that courts are willing to dismiss cases in which consumers close their eyes to plain language on a label in favor of their own contrary and conclusory interpretations of the words before them.

# AD LAW ACCESS



For more information on this and other topics, visit:

- [Advertising and Privacy Law Resource Center](#)
- [Ad Law Access Blog](#)
- [Ad Law News and Views Newsletter](#)
  - [Back to School Edition out now](#)