

Blog Entry: Expect a Mess When Food and Class Actions Collide: Part 1

MARCH 27, 2017

Source: Array

Remember eating pasta and spaghetti sauce as a kid? Remember what it did to your shirt? Your face? Want to rekindle that memory?

Two recent cases will help you revive it. One involves gumbo; the other, gourmet foods and ingredients. Both involve putative class actions, and each created its own unique mess.

Part 1 of this two-part series concerns Campbell Soup Company's Chunky Healthy Request Grilled Chicken & Sausage Gumbo, quite possibly a contender for world's longest-named food. On its label were the words "Healthy Request," "Heart Healthy," "COOKED WITH CARE," and "Made with Lean Chicken Meat," an American Heart Association "CERTIFIED" emblem and the words "Meets Criteria for Heart - Healthy Food," and "vignettes of vegetables and grains."

Harold Brower and Melinda Ferguson claimed that they bought and ate that gumbo because they relied "on the health and wellness claims conveyed through" the label. But when they learned that it contained "an artificial trans fat in the form of partially hydrogenated soybean oil," they sued in a San Diego federal court, alleging that they were "injured by spending money on a product that was worth less than what [they] paid for it." "Had [they] known about the presence and detrimental health effects of artificial trans fat in Healthy Request Gumbo," they asserted, they "would not have purchased" it, "or would not have purchased as much of it." And consuming the gumbo, they claimed, "increased [their] risk of heart disease and other morbidity."

Okay, but did they at least enjoy the gumbo?

Perhaps, but that didn't stop them from launching claims against Campbell alleging violations of California's Unfair Competition Law, False Advertising Law, and Consumer Legal Remedies Act, and for breach of warranty under California's Commercial Code. Nor did it deter them from seeking certification of a plaintiff class consisting of "all persons in California who, on or after April 25, 2012, purchased Healthy Request Gumbo for personal, family, or household use, and not for resale."

Campbell moved to dismiss, claiming that plaintiffs' claims were preempted by the Poultry Products Inspection Act and the Federal Meat Inspection Act, two federal statutes enacted "to prevent the interstate distribution of adulterated and misbranded poultry and meat." Under those statutes, the United States Department of Agriculture's Food Safety and Inspection Service ("FSIS") inspects product labels, which "must be approved before products bearing that label are sold in interstate commerce." And here, the FSIS had approved the gumbo's label.

That did not bode well for plaintiffs, because those federal statutes also contain preemption clauses, by which they override state law “if the state law imposes marking, labeling, packaging, or ingredient requirements” and those requirements “are in addition to or different than” those imposed by the federal statutes. Did the California statutes under which plaintiffs sued impose marking, labeling, packaging, or ingredient requirements on Campbell? They did; in fact, plaintiffs conceded that point by suing Campbell under those statutes. And were those requirements “in addition to or different than” those imposed by federal statutes? The court found that they were; specifically, it noted that “a jury could conclude that the labels should disclose more information or employ different language,” which “would introduce requirements in addition to or different from those imposed” by federal law. And so the court held that plaintiffs’ state law claims were preempted by federal law, and on March 21, 2017, dismissed their lawsuit.

Think about that for a moment. A food label that *might* have been deemed misleading under California law was nonetheless judicially untouchable because it had been approved by the federal government.

Now this alone would not suffice to speckle spaghetti sauce on anyone’s crisp white shirt, but this might: Both parties also sought sanctions against each other under Federal Civil Rule 11. Campbell claimed that plaintiffs’ lawsuit was baseless, and plaintiffs claimed that Campbell’s sanctions motion was baseless. In other words, a food fight ensued. But the court stepped in, denied both motions, and told the parties to wash up.

The case is *Brower v. Campbell Soup Company*, United States District Court, Southern District of California, case no. 3:16-cv-01005-BEN-JLB, 2017 WL 1063470 . And take note: part 2 of this series makes this case look like High Tea at the Ritz. Stay tuned.