

CLIENT ALERT

District Court Allows Class Action Lawsuit over '100% Natural' Claims to Proceed

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On March 26, 2014, the United States District Court for the Northern District of California denied General Mills's motion to dismiss a complaint alleging that labels claiming various General Mills products are "100% Natural" are deceptive and misleading to consumers.

Plaintiff Gabriel Rojas filed the complaint in October 2013 on behalf of a putative class of consumers who purchased twenty-nine varieties of Nature Valley snack bars labeled "100% Natural." According to the complaint, the products "are not 'natural,' and certainly not '100% natural,' because they contain Genetically Modified Organisms (GMOs) and other synthetic ingredients."

Although the U.S. Food and Drug Administration (FDA) and other federal agencies have refused to define the term "natural," FDA has said it would not object to the term's use on products that "do[] not contain added color, artificial flavors, or synthetic substances." Relying on this statement and regulations defining synthetic ingredients as substances that have been altered from their natural state by chemical processes, Rojas contends that ingredients derived from GMOs are not natural. GMOs, he says, are "plants that grow from seeds in which DNA splicing has been used to place genes from another source into a plant" and thus General Mills's claims that products containing such ingredients are "100% natural" violate various provisions of California state law, including prohibitions on unlawful business practices, unfair business practices, and false advertising.

General Mills filed a motion to dismiss the action in December 2013. It argued that Rojas did not meet California's "reasonable consumer" standard for various reasons, including that Rojas's allegations "reflect a subjective, individualized understanding for the term at issue." General Mills pointed to other similarly-situated plaintiffs who did not include GMOs as the basis for their complaints regarding the term "all-natural." In addition, General Mills contended that a "reasonable consumer" would review the ingredients list to dispel any ambiguity.

The court, however, rejected these arguments, finding the question of whether a "reasonable consumer" would be deceived better left to a jury as a matter of fact finding. The court believed that "Rojas has adequately alleged [the claims] could plausibly deceive a reasonable consumer." The court then rejected General Mills's contention that a reasonable consumer would check the ingredients list, pointing to Ninth Circuit case law on the issue.

The court's decision is the latest in a growing number of consumer actions against the food industry on allegedly misleading claims regarding "natural" ingredients. With FDA remaining silent on the definition of "natural"—and whether GMOs are considered natural—courts are left to decide the issue.

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Until a final decision is given by FDA or a court, or until the food industry drops the word "natural" altogether, class action claims like this will likely continue. This prospect may worry defendant food companies as recent research suggests most jurors believe it is false advertising to label a food as "all natural" if it contains any processed ingredients.

Though states have sought to clarify the issue somewhat by mandating labels for GMOs, a proposed federal bill would prohibit any mandatory labeling for GMOs and ban ballot initiatives on the topic. U.S. Representative Mike Pompeo of Kansas introduced the bill, named the "Safe and Accurate Food Labeling Act" (H.R. 4432) on April 9, 2014. If successful, the legislation would give FDA authority to mandate the labeling of GMOs and require FDA to issue regulations defining "natural." The bill also blocks recent efforts by states to mandate GMO labels, including two successful bills recently passed in Maine and Connecticut, by prohibiting "any [state] requirement for the labeling of a food by virtue of its having been developed using bioengineering, including any requirements for claims that a food is or contains an ingredient that was developed using bioengineering." In the end, FDA and courts would be left to decide the issue, each staring at the other in a game of food labeling chicken.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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