

CLIENT ALERT

CBD False Advertising Claims Stayed Pending Further FDA Guidance

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With the recent rise of federal Food & Drug Administration (FDA) warning letters to the manufacturers of various ingestible cannabidiol (CBD) products, we can expect an increase in false advertising claims against manufacturers, distributors and sellers of those products. Nonetheless, in an important case of first impression in this arena, a federal trial court in the Southern District of Florida recently stayed a false advertising class action against a seller of CBD products under the “primary jurisdiction” doctrine.

The primary jurisdiction doctrine applies when a plaintiff’s claims require a federal agency’s expertise or guidance with respect to a regulated product. Cases are often stayed under the doctrine when relevant federal legislation is pending or applicable regulations are under review. However, other courts have declined to stay cases under primary jurisdiction when the government’s timing for issuing its guidance is unclear, or regulatory review has been pending for an overlong period.

Regulatory oversight of CBD ingestible products is currently vested in the FDA. Thus, although the state of Florida had established labeling requirements for CBD products (effective January 1, 2020), the district court emphasized that (1) the FDA had clearly expressed its concern with respect to CBD (or other hemp-derived) product labels, (2) the FDA was under pressure from Congress and the hemp industry to expedite the publication of regulations and policy guidance, and (3) the FDA was actively considering the regulation of CBD products. Therefore, the court declined to rule on the merits of plaintiffs’ class action based solely on the Florida legislation and stayed the case until the FDA completes its rulemaking regarding the labeling of such products.

While it is difficult to predict the content of the FDA’s ultimate labeling requirements for CBD products, manufacturers and sellers of these products have another weapon in their arsenal for responding to potential class actions and mass tort claims, at least in the near term.

The case is *Snyder v. Green Roads of Florida, LLC*, Case No. 0:19-cv-62342-UU, 2020WL 4239 (S.D. Fl. Jan. 3, 2020).

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