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Food & Consumer Packaged Goods Litigation

Court Dismisses Evaporated Cane Juice Claims Where Labels Disclosed Sugar Content

Thomas v. Costco Wholesale Corp., No. 5:12cv2908 (N.D. Cal.): The court granted in part and denied in part defendant's motion to dismiss in a putative class action alleging claims under California's UCL, FAL, and CLRA claiming that several of defendant's products were misbranded and/or misleading with respect to a) nutrient content, b) antioxidant claims, c) "no sugar added" claims, d) health claims, e) "0 grams trans fat" claims, e) evaporated cane juice, f) synthetic chemical content omissions, g) "preservative free" claims, and h) slack-filled packaging. First addressing Article III standing, the court ruled that one of the named plaintiffs, Thomas, lacked standing because she failed to sufficiently allege that the "no trans fat" representations were actually untrue, and thus she could not meet the injury-in-fact or causation requirements. Next addressing Rule 9(b), the court first held that all of plaintiff's UCL claims, including those under the "unlawful" prong, were subject to Rule 9(b). The court then held that plaintiffs had satisfied their burden with respect to their nutrient content, antioxidant content, health, no sugar added, preservative free, and slack-fill claims because these claims may deceive a reasonable consumer. However, the court dismissed the ECJ claims, noting that the products' labelling specifically listed "sugar" as a nutrient and showed how much sugar was in the products. Because plaintiffs suggested in their complaint that they knew that ECJ was sugar and failed to allege what they believed ECJ was if it was not sugar, or what a reasonable person might believe ECJ to be, the allegations were insufficient. Finally, the court found no need to address defendant's primary jurisdiction argument because it had already dismissed the ECJ claims. [Order](#).

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