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Food & Consumer Packaged Goods Litigation

Court Dismisses ECJ Claims While Upholding “Natural” Claims

Pratt v. Whole Foods et al., No. 5:12cv5652 (N.D. Cal.): The court granted in part and denied in part a motion to dismiss a putative class action alleging misbranding and the misleading use of the terms "evaporated cane juice" (ECJ) and "natural" on a number of products. Denying dismissal based on preemption, the court rejected defendants' argument that plaintiff's claims were impliedly preempted because private litigants cannot enforce FDA requirements under the FDCA, holding that plaintiff could bring his claims under California's Sherman Law, which parallels the federal FDCA and NLEA. The court also held that plaintiff's ECJ claims did not seek to impose requirements different than requirements under the FDCA, and therefore were not preempted. Further, the court rejected defendants' argument that plaintiff's "natural" claims were preempted, relying on previous decisions from the Northern District of California. As to defendants' primary jurisdiction argument, the court again followed Northern District of California precedent in ruling that neither the ECJ claims nor the "natural" claims required dismissal under the primary jurisdiction doctrine. Next addressing defendant's Rule 9(b) arguments, the court rejected plaintiff's claim that he did not need to plead reliance as to the misbranding claims, but did not specify whether the pleadings did so sufficiently. The court then upheld plaintiff's "natural" claims, but dismissed the ECJ claims without prejudice under the reasoning of previous cases in the district: the accused labels stated that the products contained sugar and the amount of sugar in the products; plaintiff indicated that he knew that ECJ was sugar; and the complaint failed to allege whether plaintiff believed that ECJ was something other than sugar or what a reasonable person might have believed ECJ to be other than sugar. Finally, the court also dismissed the unjust enrichment claim, holding that plaintiff's other claims provided duplicative relief, but upheld plaintiff's request for injunctive relief because defendants had not demonstrated that the products at issue had been discontinued. [Order](#).

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