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### Tenth Circuit Affirms Dismissal of "Biologically Appropriate" Pet Food Case

The U.S. Court of Appeals for the Tenth Circuit recently affirmed dismissal in [Renfro v Champion Petfoods USA Inc.](#), where the plaintiffs challenged label claims such as "Biologically Appropriate," "Trusted Everywhere," "Fresh and Regional Ingredients," and "Ingredients We Love [From] People We Trust." The district court had dismissed these claims as either puffery or not materially misleading to a reasonable consumer. The Tenth Circuit agreed, holding:

- The claims "Trusted Everywhere" and "Ingredients We Love [From] People We Trust" were nonactionable puffery. These statements are not falsifiable and "Champion does not make claims about its testing regimens on the dog food packaging. Nor does Champion say on the packaging that the dog food is free from filler. Instead, the statements about being 'Trusted Everywhere' and using 'Ingredients We Love [From] People We Trust' are the sort of subjective and 'vague generalities that no reasonable person would rely on as assertions of particular facts.'"
- The phrase "Fresh and Regional" was either not empirically verifiable or was unactionable puffery. "Although Plaintiffs allege that the dog food contained a 'material amount' of non-fresh and non-regional ingredients, they do not explain what amount of fresh ingredients a reasonable consumer would expect or why Champion's advertising claims suggested that the food was entirely fresh or regional. In fact, the ingredients listed on the Orijen and Acana packaging belie any understanding that the food is entirely fresh by listing non-fresh and non-regional ingredients."
- The plaintiffs' challenge to the term "Biologically Appropriate" lacked standing. "The district court understood Plaintiffs' claim was based on its allegation that some of the food sold in 2018 contained beef tallow contaminated with pentobarbital. In analyzing the claim, the court found that none of the plaintiffs actually purchased any dog food that contained beef tallow as an ingredient . . . . We agree Plaintiffs could not have suffered any consumer protection injury if they had not purchased dog food containing the objectionable ingredients." Further, "no reasonable consumer would have concluded this general statement of quality was a material misstatement of fact. . . . The only conclusion that a reasonable consumer could draw from a package that claimed the dog food was 'Biologically Appropriate' is that it was fit for dogs to consume."
- The plaintiffs' omission-based claims (that Champion failed to disclose the risk of pentobarbital and risk of non-regional/non-fresh ingredients) did not give rise to a fraudulent concealment claim, but Champion had no duty to disclose based on statements of puffery.

## Authors

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