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Tenth Circuit Holds “Made in USA” Challenge Is Preempted

Last week, a split-panel of the Tenth Circuit affirmed the district court's dismissal of a false advertising case in which plaintiffs alleged that "Product of the U.S.A." labels on various beef products were misleading because the products do not originate from cattle born and raised in the United States. Plaintiffs alleged that defendants imported live cattle from other countries, slaughtered and processed the cattle in the United States, and labeled the resulting beef products as "Products of the USA." Plaintiffs claimed this practice violated the New Mexico Unfair Practices Act and sued on that basis. Defendants filed a motion to dismiss, which the district court granted largely on preemption grounds. The court reasoned that the United States Department of Agriculture pre-approved the "Products of USA" labels under the Federal Meat Inspection Act (FMIA), 21 U.S.C. § 601-695, which contains an express preemption provision, 21 U.S.C. § 678. The district court concluded that, since Plaintiffs sought to impose standards on defendants not identical to federal law, the claims were preempted. The Tenth Circuit majority agreed. It held that the FMIA "plainly preempts plaintiffs' labeling claims." The USDA "has already approved defendants' labels, concluding that they are not deceptive or misleading under the FMIA." Plaintiffs seek to impose a "different standard, insisting that the labels are nevertheless deceptive and misleading under state law and must be changed." Allowing Plaintiffs to pursue a false advertising claim based on labels USDA approved as not misleading "is precisely what § 678 prohibits." So, the claim was preempted. The decision is [here](#).

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