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Food & Consumer Packaged Goods Litigation

Court Dismisses Most of plaintiff's Claims Based on Regulatory Violations

Victor v. R.C. Bigelow, Inc., No. 13cv2976 (N.D. Cal.): In a putative class action alleging claims under California's CLRA, FAL, and UCL that the defendant's tea products are misbranded and misleading because they make improper health claims that they "deliver[] healthful antioxidants," Judge Orrick granted in part and denied in part the defendant's motion to dismiss. The court had previously granted in part a motion to dismiss and found that the amended complaint failed to address the frailties in the previous version. Relying on decisions by other courts in the district, the court first rejected the defendant's argument that the plaintiff could only assert a claim under the unlawful prong of the UCL if he could allege that he subjected himself to criminal liability by purchasing the challenged products. Rather, plaintiff alleged sufficient injury by alleging that he would not have purchased the product but for the allegedly unlawful label. The court found that the plaintiff had not sufficiently pleaded a claim under the fraudulent prong of the UCL, the CLRA, or the FAL because he failed to allege how the phrase "delivers healthful antioxidants" was false or misleading. The plaintiff pleaded only that he was misled to believe that the claims were legal and were supported by scientific evidence capable of regulatory acceptance. He did not plead that the phrase "delivers healthful antioxidants" was false or that the products did not contain antioxidants. The court reiterated that "the mere fact that a statement violates a regulation is insufficient to show that it is also misleading." Finally, the court held without much discussion that the plaintiff failed to state a claim under the unfair prong of the UCL because he had not pleaded any additional facts to address the court's previous concerns that (a) he failed to explain how the subject representations "offend[] an established public policy or is 'immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers'", and (b) failed to allege that the utility of the conduct did not outweigh the alleged harm. [Order.](#)

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