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Food & Consumer Packaged Goods Litigation

Court Denies Defendant's Motion for Summary Judgment in "Tito's Handmade Vodka" False Advertising Suit

Hofmann v. Fifth Generation, Inc., No. 3:14-cv-02569 (S.D. Cal.): In this putative class action alleging negligent misrepresentation and violations of California's UCL, FAL, and CLRA, based on claims that Defendant falsely calls its product "Tito's Handmade Vodka" although the production process is highly mechanized, the Court denied Defendant's motion for summary judgment. Defendant's bid for summary judgment repeated an argument unsuccessfully raised in its motion to dismiss—the assertion that Plaintiffs' UCL and CLRA claims were barred by the safe harbor exception to California's consumer-protection laws. Defendant contends that the safe harbor doctrine prohibits any claim based on conduct that state or federal law has considered and permitted, including the U.S. Department of Treasury's Alcohol and Tobacco Tax and Trade Bureau ("TTB"), which specifically authorized Tito's label. The Court rejected Defendant's attempt to inject new life into this argument by distinguishing it from federal preemption. The Court also rejected Defendant's argument that the certificate of label authorization ("COLA") issued by the TTB was entitled to *Chevron* deference, after finding that the TTB's COLA procedures were insufficiently formal to constitute a "deliberative process akin to notice and comment rulemaking or an adjudicative enforcement action." Finally, the Court found that further factual development was required on the issue of whether the TTB's approval of the use of the term "handmade" on Tito's label should be given the force of federal law. *[Order attached.](#)*

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