District Court Dismisses Nationwide Coffee Labeling Class Action

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Porzio Class Action Update

In what is believed to be the first decision of its kind, the federal district court for the Northern District of Illinois granted our clients Aldi Inc. and Pan American Coffee Co. LLC's motion to dismiss with prejudice a putative nation-wide consumer protection class action. *Brodsky v. Aldi Inc. et. als.*, No. 1:20-cv-07632 (RWG) (N.D. Ill. Sept. 28, 2021) [ECF No. 46]. Plaintiffs, California and New York residents, alleged that the "Makes Up To" statement on the front of Aldi's "Beaumont" private label branded coffee is deceptive because a consumer cannot achieve the stated "210 six-ounce cups" by measuring coffee one tablespoon at a time, as recommended in the brewing instructions for making a single serving. Similar cases are pending against other companies in the state and federal courts in Alabama, California, Florida, Maryland, Massachusetts, New Mexico, and New York.

Plaintiffs' First Amended Complaint alleged violations of the California Consumer Legal Remedies Act, Cal. Civ. Code § 1750 et seq. ("CLRA"); the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq. ("UCL"); the California False Advertising Law, Cal. Bus. & Prof. Code § 17500, et seq. ("FAL") and the New York General Business Law §§ 349, 350 ("NYGBL"); breach of express warranty under California and New York law; and breach of implied warranty under New York law. Plaintiffs claim that the Beaumont label is "false and misleading and omits material information" and "violates [a] consumer's reasonable expectations."

On standing, the court followed other courts in ruling that allegedly "overpaying for a product that underdelivers" is a concrete injury. However, the district court departed from other courts by holding plaintiffs lacked standing to sue for products they did not purchase, here decaffeinated coffee. Recognizing that the law is unsettled, the court declined to adopt the "substantial similarity" test, which would permit plaintiffs to piggyback on the standing of absent class members who used this product. The court also concluded that because there is no realistic chance that plaintiffs will be deceived again by the label, the prospect of future harm was too conclusory, conjectural and speculative to justify injunctive relief. The court found that plaintiffs suffered a monetary loss sufficient to support standing, but only for the coffee products they purchased, not those they might purchase.

Most significantly, the court adopted our position that each element of the label must be viewed in its entirety when considering the truthfulness of the "Makes Up To" statement, including the "net weight" statement, the "Brewing Instructions," the recommendations for making a single serving and multiple servings, and the suggestion to "[u]se more or less coffee to get desired strength." On the substantive claims, the court accepted the central tenet of our argument that under California and New York law, the label did not create a likelihood of deception or the capacity to deceive a reasonable consumer. The court noted that because the weight on the cannister appears truthful, there could be no plausible underfilling claim. The district court further observed that other courts in different contexts have held that "up to" language does not deceive or confuse consumers. The court concluded that "no reasonable consumer would

understand the 'up to' language to be a guarantee. This language is not a promise that the cannister will make that amount, but just that it can under certain circumstances. Put another way, it is clearly a ceiling, not a floor." Reading the entire label in context, and without the plaintiffs' overly literalistic interpretation, the court rejected their argument that the label "promise[s] that the maximum yield will be achieved by following the instructions for a single serving." The court acknowledged that people make and enjoy their coffee at different strengths. This conclusion strongly suggests that the court would have been antagonistic to certifying the class later had it denied the motion to dismiss.

Brodsky is part of a national wave of costly and disruptive food labeling false advertising class actions. Manufacturers and packagers of such products would be well advised to have experienced consumer protection counsel conduct a liability assessment of yield and other claims on their labels.