

Food Litigation Newsletter



THIS NEWSLETTER AIMS to keep those in the food industry up to speed on developments in food labeling and nutritional content litigation.

ABOUT
Perkins Coie's Food Litigation Group defends packaged food companies in cases throughout the country.

Please visit our website at perkinscoie.com/foodlitnews for more information.

RECENT SIGNIFICANT DEVELOPMENTS AND RULINGS

Mott's Defeats Class Certification in Apple Juice Labeling Fight

Rahman v. Mott's LLP, No. 3:13-cv-03482 (N.D. Cal.): A California federal judge denied certification of a California class in a case alleging that Mott's mislabeled its 100% apple juice as "no sugar added." The plaintiff sought class certification under Rule 23(b)(3) for his California Unfair Competition Law and quasi-contract claims, which previously survived summary judgment. The court found the plaintiff satisfied Rule 23's predominance requirement as to issues of liability but failed to show predominance as to damages because he introduced no evidence showing that restitution damages could feasibly and efficiently be calculated on a class-wide basis. Thus, no class could be certified for purposes of seeking damages. Acknowledging his failure to provide evidence that damages could be measured on a class-wide basis, the plaintiff asked the court to certify a liability-only class under Rule 23(c)(4). The court denied the plaintiff's request, finding the plaintiff failed to show why certifying a liability-only class would be efficient or desirable. The court found that allowing the plaintiff to later certify a second class for damages (if he was successful on his liability class) would essentially require two trials. The court noted that the plaintiff was vague about whether he intended to later seek a class for damages, let class members pursue damage claims individually, or pursue some other undisclosed plan. None of these options were desirable and the court accordingly denied the request for a liability-only class. [Order](#).

Court Tentatively Approves Classes in ConAgra "Natural" Cooking Oil Labeling Dispute

In re ConAgra Foods, Inc., No. 2:11-cv-05379 (C.D. Cal.): A federal judge in California tentatively ruled to certify classes in ten states alleging ConAgra Foods falsely advertises its Wesson-brand vegetable oils as "100% natural" when they contain oils extracted from genetically-modified organisms. The court's tentative ruling would approve classes in California, Colorado, Florida, Indiana, Nebraska, New York, Ohio, Oregon, South Dakota, and Texas. The court has not yet issued a final ruling.

Starbucks' Bad Meat Lawsuit Against Distributors Survives Dismissal

Starbucks Corp. v. Wellshire Farms: No. 14-0041 (NLH/AMD) (D.N.J.): Starbucks defeated a motion to dismiss by meat distributor Hahn Brothers in a suit in New Jersey

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federal court claiming that Hahn and Wellshire Farms supplied Starbucks with bacteria-infected ham for Starbucks' sandwiches. Hahn argued that Maryland's three-year statute of limitations should apply to Starbucks' claims, which arose in 2010, instead of New Jersey's six-year statute of limitations. The court denied the motion, finding dismissal premature because it was not clear from the face of the complaint which state's law would apply. [Order.](#)

Court Approves \$6.1 Million Settlement of Truvia False Advertising Lawsuit

Howerton v. Cargill, Inc., No. 13-00336 LEK-BMK (D. Haw.): A federal court in Hawaii has given final approval to a nationwide class action settlement involving Cargill's Truvia sweetener. The plaintiffs alleged that Cargill marketed the sweetener as "natural" when it actually contains synthetic and chemically produced ingredients. Under the settlement, Cargill will pay \$6.1 million into a settlement fund. Class members who file claims can receive up to \$45 in cash or \$90 in vouchers. Class counsel will receive \$1.8 million in attorneys' fees, which will be deducted from the settlement fund. Cargill also agreed to certain label changes to clarify its "Nature's Calorie-Free Sweetener" and "Truvia Natural Sweetener provides the same sweetness as two teaspoons of sugar" statements, remove the phrase "similar to making tea" from all Truvia packaging, and update the Truvia website to better explain the how Truvia is manufactured. [Order.](#)

Hawaii Anti-GMO Ordinance Stuck Down

Hawai'i Floriculture & Nursery Association v. County of Hawaii, No. 14-00267 BMK (D. Haw.): A Hawaii federal judge struck down a Hawaii County ordinance that limits the growth of genetically modified crops, finding it was preempted by the federal Plant Protection Act and Hawaii state law. The ordinance would have banned most genetically modified crops from being grown on Hawaii's Big Island, except in greenhouses. A similar ordinance in Kauai County, Hawaii, was struck down in August 2014. [Order.](#)

NEW FILINGS

Gonzalez v. Del Sol Food Co., Inc., No. BC564578 (L.A. Sup.): Putative class action alleging that defendant falsely advertises its salad dressing as "all natural."