

MDL Status Denied in Beverage Litigation

January 5, 2012 by [Sean Wajert](#)

The Judicial Panel on Multidistrict Litigation declined to consolidate the suits brought by plaintiffs attacking the marketing of beverages as “all natural” even though they allegedly contained a preservative. [In re Skinnygirl Margarita Beverage Marketing and Sales Practices Litigation](#), No. 2306 (JPML 12/14/11).

The central allegation was that Skinnygirl Margarita beverage was marketed as being all natural despite some level of sodium benzoate. Pursuant to 28 U.S.C. § 1407, plaintiffs sought centralization of actions pending in six districts. Plaintiffs sought centralization in the Central District of California or, in the alternative, the District of New Jersey.

The Panel was not persuaded that Section 1407 centralization was necessary for the convenience of the parties and witnesses or for the just and efficient conduct of this litigation at this time, even if these putative nationwide class actions may share some factual questions regarding the defendants’ alleged marketing. It appeared that the common, material *disputed* facts may be limited in number. In addition, centralization would not prevent either conflicting or multiple rulings, because plaintiffs brought their claims under the laws of different states. Under some state laws, for example, the state of mind or reliance by individual purchasers may be a critical factor; in others it may not. These issues would not thus involve common discovery.

Finally, that all defendants uniformly opposed centralization was a factor which is quite influential where other factors do not strongly favor centralization.

The order cited to the precedents that earlier this year, the [Panel denied centralization](#) in MDL No. 2248 – In re: Nutella Marketing and Sales Practices Litigation even though the common defendant, and eventually all plaintiffs, supported centralization. See In re Nutella Mktg. and Sales Practices Litig., 2011 WL 3648485, (J.P.M.L. Aug. 16, 2011). Similarly, the Panel denied centralization in MDL No. 2026 – In re: AriZona Beverage Co. Products Marketing and Sales Practices Litigation. The Panel found that the factual questions surrounding whether the defendants deceptively marketed their beverage products as being all natural when those beverages contain high fructose corn syrup did not appear to be sufficiently complex or numerous to warrant centralization. See In re AriZona Beverage Co. Products Mktg. and Sales Practices Litig., 609 F. Supp. 2d 1369 (J.P.M.L. 2009). A similar outcome was deemed appropriate here.