

# Another Vanilla Bean Lawsuit is Nipped in the Bud

## Publications

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On June 14, 2021, Judge Jeffrey S. White of the Northern District of California dismissed yet another lawsuit challenging representations about vanilla on food products. In that lawsuit—*Lisa Robie v. Trader Joe's Company*, Case No. 4:20-cv-07355-JSE—the plaintiff alleged that Trader Joe's mislabels its Almond Clusters cereal as “Vanilla Flavored With Other Natural Flavors,” when in fact (1) the cereal contains only trace amounts of real vanilla, and (2) the predominant source of the vanilla taste is from the artificial flavors vanillin and ethyl vanilla.

The court dismissed the claims on several grounds, with leave to amend. First, the court found that, to the extent the plaintiff challenged the product's *flavors*—as opposed to its ingredients—as unnatural, those claims were preempted by the FDA's flavor regulations. Second, the court found that the statutory and common law claims failed as a matter of law because the plaintiff did not plausibly allege that a reasonable consumer would interpret the “vanilla” representation to mean that the product's flavor is derived exclusively from the vanilla plant. In so holding, the court found that the plaintiff failed to plausibly allege that the vanillin in the cereal is necessarily artificial. The court also noted that the label did not include any words or pictures suggesting the cereal's vanilla flavor is derived exclusively from the vanilla bean or plant. And even if the label's reference to “vanilla” would lead consumers to believe that the product contains vanilla from the vanilla plant, the court found no deception because the plaintiff conceded that the product *does* contain some real vanilla. The court also dismissed the plaintiff's equitable claims because she had not alleged that she lacked an adequate remedy at law.

Other courts have recently dismissed similar lawsuits challenging vanilla representations on various products for failure to plausibly plead consumer deception. See *Steele v. Wegmans Food Mkts., Inc.*, 472 F. Supp. 3d 47, 50 (S.D.N.Y. 2020); *Pichardo v. Only What You Need, Inc.*, No. 20-493, 2020 WL 6323775, at \*3–5 (S.D.N.Y. Oct. 27, 2020); *Cosgrove v. Blue Diamond Growers*, No. 19-8993, 2020 WL 7211218, at \*3–5 (S.D.N.Y. Dec. 7, 2020); *Barreto v. Westbrae Nat., Inc.*, --- F.Supp.3d ---, 2021 WL 76331, at \*2–6 (S.D.N.Y. Jan. 7, 2021); *Clark v. Westbrae Natural, Inc.*, No. 20-3221, 2020 WL 7043879, at \*2-4 (N.D. Cal. Dec. 1, 2020); *Cosgrove v. Oregon Chai, Inc.*, No. 19-10686, 2021 WL 706227, at \*12–14 (S.D.N.Y. Feb. 21, 2021).

At the same time, a handful of similar vanilla lawsuits have proceeded past the motion to dismiss stage. See *Sharpe v. A&W Concentrate Co.*, 481 F. Supp. 3d 94, 101–04 (E.D.N.Y. 2020) (denying motion to dismiss and finding that plaintiffs “plausibly alleged that the ‘MADE WITH AGED VANILLA’ representation—prominently displayed underneath the A&W logo and on front of the bottle or box, bolded and in all capital letters—falsely implie[d] that any vanilla content derive[d] predominantly from the vanilla plant, instead of its artificial and synthetic counterpart”); *Vizcarra v. Unilever United States, Inc.*, No. 20-2777, 2020 WL 4016810 (N.D. Cal. July 16, 2020) (in case concerning Breyers Natural Vanilla Ice Cream, denying motion to dismiss that did not challenge whether plaintiff plausibly pleaded deception); *Dailey v. A&W Concentrate Co.*, No. 20-CV-02732-JST, 2021 WL 777114, at \*1 (N.D. Cal. Feb. 16, 2021) (noting that the “case is ‘a near-duplicate’ of *Sharpe*” and finding “[f]or the reasons stated in *Sharpe*, Plaintiffs’ allegations are sufficient to withstand a motion to dismiss”). The plaintiff in *Vizcarra* filed a motion for class certification on June 11, 2021, which is scheduled to be heard on September 14, 2021. A denial of class certification in *Vizcarra* would tip the scales even further in favor of the defendants that have been prevailing in most of the vanilla cases thus far.

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