

Three Strikes, You're Out! New York Federal Courts Reject Three Implausible Mislabeling Actions

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By: Lindsey A. Lusk

New York federal courts have recently shown a willingness to dismiss implausible mislabeling claims on the pleadings. The recent dismissal of three consumer class actions—all filed by the same plaintiff's counsel—suggests that these federal courts are increasingly skeptical of lawyer-driven claims regarding alleged confusion over the labeling of popular food products.

On November 4, 2021, in *Boswell v Bimbo Bakeries USA, Inc.*, Judge Furman of the Southern District of New York dismissed a putative class action alleging that Entenmann's "All Butter Loaf Cake" was misleadingly labeled because it contained not only butter, but also soybean oil and artificial flavors.^[1] In reaching this conclusion, the court specifically called out the plaintiff's attorney for bringing "a long string of putative class actions . . . alleging that the packaging on a popular food item is false and misleading."^[2] Notably, the court took judicial notice not only of the labeling of the challenged Entenmann's product, but also the labeling of *other* butter cake products—which the court deemed probative of the context in which consumers purchase these products.^[3]

On November 9, 2021, in *Kamara v. Pepperidge Farm Inc.*, Judge Castel of the Southern District of New York dismissed with prejudice a putative class action alleging that the term "Golden Butter Crackers" was misleading because the crackers also contained vegetable oil.^[4] In so holding, the court noted that "a reasonable consumer could believe the phrase 'Golden Butter' refers to the product's flavor and wasn't a representation about the ingredients' proportions."^[5] But even if a consumer did believe as much, "[t]he packaging accurately indicated that the product contained butter," which was prominently featured on the ingredient list—second only to flour.^[6] The court found that "[t]he complaint [did] not plausibly allege why a reasonable consumer would understand the phrase 'Golden Butter' to mean that 'wherever butter could be used in the product, it would be used instead of using its synthetic substitute, vegetable oil.'"^[7]

Even more recently, on December 3, 2021, in *Warren v. Whole Foods Market Group Inc.*, Judge Kovner of the Eastern District of New York dismissed a putative class action alleging that the label of

Whole Foods Market’s instant oatmeal misled consumers into thinking the product was sugar-free or low in sugar.^[8] The court reasoned that “even if a reasonable consumer was unaware of sugar’s many names, or of the nutrition label’s purpose, the fact remains that the words ‘Sugar 11g’ are prominently displayed immediately next to the ingredient list.” As the court noted, “[t]hose words are hard to miss.”^[9]

These rulings may signal that federal courts—at least in New York—are increasingly inclined to take a harder look at the pleadings in food mislabeling cases, as well as the broader context in which the products are sold, and grant motions to dismiss where the allegations come up short of plausible. While it is unlikely that these rulings will completely deter other plaintiffs’ lawyers from filing these lawsuits, they undoubtedly provide ammunition for defendants faced with similar food labeling lawsuits in New York federal courts.

[1] *Boswell v. Bimbo Bakeries USA, Inc.*, No. 20-CV-8923 (JMF), 2021 WL 5144552, at *1 (S.D.N.Y. Nov. 4, 2021).

[2] *Id.*

[3] *Id.* at *4.

[4] *Kamara v. Pepperidge Farm, Inc.*, No. 20-CV-9012 (PKC), 2021 WL 5234882, at *2 (S.D.N.Y. Nov. 9, 2021).

[5] *Id.*

[6] *Id.* at 5.

[7] *Id.*

[8] *Warren et al. v. Whole Foods Market Group, Inc.*, No. 19CV6448RPKLB, 2021 WL 5759702, at *1 (E.D.N.Y. Dec. 3, 2021).

[9] *Id.*

Related Attorneys



Lindsey A. Lusk

Partner

llusk@jenner.com

+1 312 840 7367

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