



United States Judicial Panel on Multidistrict Litigation to Consider Misrepresentation in Food Labeling

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On May 26, 2016, the United States Judicial Panel on Multidistrict Litigation (the “MDL”) will consider whether to consolidate dozens of cases from federal courts across the country involving food mislabeling for pretrial hearings and related proceedings. The panel will hear oral argument regarding whether clusters of cases, with defendants such as Kraft Heinz Foods and Walmart, share sufficiently common questions of fact to be combined for judicial efficiency.

By way of background, these cases stem from consumers’ allegations that food product labels misrepresent their contents. These misrepresentation lawsuits stem in part from an investigation conducted by the Food and Drug Administration (the “FDA”) in 2012. The investigation sought to uncover whether certain Parmesan cheeses contained fillers not disclosed on their labels. As reported by the Chicago Tribune, the FDA uncovered that Castle Cheese Inc.’s “100 percent real” Parmesan cheese contained cellulose, which is used as a common anti-clumping agent made from wood pulp, or cheaper cheddar instead of Romano cheese. While Castle Cheese Inc.’s President pled guilty early this year and faced up to a year in prison and a \$100,000 fine, the investigation also led to further inquiry into other companies’ Parmesan production.

For example, Kraft Heinz is among the companies accused of misrepresenting the contents of its cheese on its labels, by stating that it contains “100% Grated Parmesan Cheese” when, in reality, it allegedly contains a small percentage of cellulose. Similar accusations have been made against Walmart and its “Great Value 100% Parmesan Cheese.” While the FDA has stated that certain trace levels of cellulose are acceptable in foods, class actions were nevertheless filed against Kraft Heinz and Walmart earlier this year, claiming that the mislabeling constituted a violation of state consumer fraud laws and deceptive business practices acts. In short, the plaintiffs assert that they purchased the at issue cheese products because they believed they were of a higher quality than other cheeses that did not contain the “100 percent” labels.

Beyond the claims of misrepresentation and fraud, these lawsuits represent a trend in class action consumer lawsuits that challenge the food industry to accurately represent its products in the interests of the health and well-being of consumers. As an article by the Chicago Tribune points out, this “consumer agitation” is juxtaposed with sensitivity to lawyers filing these suits simply for their financial gain. Ultimately, the MDL will determine on May 26 whether these concerns and the underlying facts of the considered cases are sufficiently similar to be heard together.

If you or your institution has any questions or concerns regarding employment or class action related issues, please contact Hayley B. Dryer at hdryer@cullenanddykman.com or at 516-357-3745.

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