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15-SECOND
ADVERTISING LAW ALERT

CASE TO WATCH: JUICY DECISION REVIVES SIGNIFICANT QUESTIONS

Manufacturers may not rely on ingredient statements to clarify labeling that is potentially misleading under California law, the Ninth Circuit held yesterday.[*] However, the court left room for a subsequent federal preemption argument.

BACKGROUND

A putative consumer class action invoked the usual suite of California statutes to challenge promotional copy and art on Defendant's "Fruit Juice Snacks."

The allegations of deceptive labeling included the juxtapositioning of "Fruit Juice" with pictures of oranges, peaches, strawberries, and cherries, while the only juice in the product was reconstituted white grape juice.

The district court dismissed the case, holding that "no reasonable consumer upon review of the package as a whole would conclude that Snacks contains juice from the actual and fruit-like substances … particularly where the ingredients are specifically identified."

On appeal, amicus curiae briefs urging reversal of the dismissal were filed by the California Attorney General and the Center for Science in the Public Interest.

DECISION

The Ninth Circuit reversed and remanded the case. It held that whether a business practice is deceptive is a question of fact that generally should not be decided by a judge before hearing the evidence.

The appeals court did not stop there. It said that it did not believe that "reasonable consumers should be expected to look beyond misleading representations on the front of the box to discover the truth from the ingredient list in small print on the side of the box."

Defendant asserted at the appeals level that the consumer claims were preempted by U.S. Food and Drug Administration regulations. The Circuit refused to consider that, but indicated that the subject was appropriate for consideration later by the district court.

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[*] *Williams v. Gerber Products Co.*, (9th Cir. No. 06-55921, April 21, 2008).