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Arizona Must Face Bulk Of 'All Natural' Gummy Labeling Suit

By **Emily Field**

Law360 (August 10, 2020, 10:46 PM EDT) -- Though a New York federal judge on Monday trimmed claims from a proposed class action alleging that Arizona Beverage Co. falsely labels its gummy snacks as "all natural," she found that the company still has to face allegations that it violated numerous state consumer protection laws.

U.S. District Judge Allyne R. Ross rejected Arizona's argument that Christopher Silva's complaint didn't state a claim under New York's deceptive advertising laws because it didn't include allegations that he relied on alleged misstatements in a certain advertisement, finding that the argument was "entirely without merit."

"The complaint includes an image of the packaging, and alleges that the phrase 'all natural,' which appears on the packaging, is a misstatement because the product contains synthetic ingredients," the judge said.

Judge Ross did dismiss Silva's claim that Arizona violated Wisconsin's Consumer Protection Act, which is mostly meant to regulate consumer credit transactions, as well as his Ohio Deceptive Trade Practices Act claim for lack of standing.

"Plaintiff's remaining 38 state consumer protection law claims are not dismissed at this time," the judge said.

In his **February** complaint, Silva said the marketing and advertising for Arizona's "All Natural Fruit Snacks" are "centered around claims that appeal to health-conscious consumers, i.e. that their product is 'all natural.'" However, the snacks contain several synthetic ingredients, according to Silva.

Silva said a "reasonable consumer" — the hypothetical everyman shopper whose imagined judgment is often used to decide false advertising cases — believes that "the term 'natural,' when used to describe goods such as the [gummies], means that the goods are free of synthetic ingredients."

If consumers did believe the gummies were all natural when they purchased them, Silva said they would have been duped because the snack food does, in fact, contain several synthetic ingredients, including ascorbic acid, dextrose, glucose syrup and modified food starch, among others.

Judge Ross also denied Arizona's motion to stay the suit while the U.S. Food and Drug Administration mulls guidance on the term "natural," saying she had no confidence that the guidance would be coming any time soon.

"In November 2015, the agency opened a docket 'to receive information and comments on the use of the term 'natural' in the labeling of human food products,'" the judge said. "It has been nearly five years since that announcement, and the FDA has issued no guidance on use of the term 'natural.'"

Although some courts have stayed similar cases based on a remark by the FDA's Dr. Susan Magne that the agency is working on the issue, the judge said that she wasn't persuaded by it.

"But Dr. Magne's comment was now almost a year ago, and there continues to be no agency action,"

the judge said. "Given the experience of the past five years, there is no reason to think the agency is going to be addressing this issue in the near future."

Representatives for the parties didn't immediately respond to requests for comment on Monday.

Silva is represented by Joseph Lipari of The Sultzzer Law Group PC.

Arizona is represented by Howard S. Wolfson and Gayle Pollack of Morrison Cohen LLP.

The case is Christopher Silva et al. v. Hornell Brewing Co. et al., case number 1:20-cv-00756, in the U.S. District Court for the Eastern District of New York.

--Additional reporting by Ryan Boysen. Editing by Michael Watanabe.

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