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## Henkel Can't Rinse Off Detergent Labeling Suit

By **Emily Field**

Law360 (February 5, 2018, 6:44 PM EST) -- A New York federal judge on Monday shut down attempts to end a proposed class action alleging Henkel Consumer Goods Inc. misleadingly labels its Purex "Natural Elements" laundry detergents, saying whether it does or not depends on if a factfinder would consider water a natural element.

U.S. District Judge Brian Cogan shut down competing motions for summary judgment from Henkel and consumer Tony Luib, who claims he bought the laundry detergents because the "Natural Elements" label led him to believe that they didn't contain synthetic ingredients. The labels display "Natural Elements" prominently, but don't specify the proportion of natural ingredients, such as by stating "all natural" or "100 percent natural," according to the order.

The detergents are composed of about a dozen ingredients, including water, which accounts for most of the weight of the detergent's formula, according to the judge

If water is counted as a natural ingredient, then the detergents consist almost entirely of natural ingredients by weight. If water isn't counted, then the detergents consist of a little more than half natural ingredients by weight, the judge said.

Henkel argues that water has a critical role in the detergents, since it enables the cleaning agents to lift stains from fabrics, while Luib downplays its significance by saying that water is found in practically all products and its use as an ingredient doesn't make a product "natural," according to the order.

The question of whether the "Natural Elements" label is misleading turns on whether a factfinder would determine that a reasonable person would be misled by the label into thinking that the detergents contain no synthetic elements, the judge said. That, in part, depends on if a factfinder would think it's reasonable to consider water a natural element.

"I cannot say that it would be unreasonable as a matter of law for a factfinder to come out one way or the other on this issue, and thus the inquiry is a factual one," Judge Cogan said.

Many commercially available cleaning agents are petroleum-based, but the main one used in the "Natural Elements" detergent is plant-based — alcohol ethoxyl sulfate, according to the order. The substance is made from alcohols derived from coconut and palm kernel oils.

Those alcohols are then made into a cleaning agent, or surfactant, by adding compounds to the original molecules, making the alcohol ethoxyl sulfate a mix of natural and synthetic on the molecular level, according to the judge.

The phrase "Natural Elements" on the detergents' labeling isn't qualified in any way, according to the judge. The labels also bear a warning reading, "CAUTION: IRRITANT. MAY BE HARMFUL IF SWALLOWED."

Additionally, the labels tell consumers to read "cautions" on the back, according to the order, and the back label discloses ingredients including sodium polyacrylate and distyrylbiphenyl disulfonate, which are both synthetic.

"Judge Cogan's decision is consistent with the majority of cases around the country that regardless of how the term natural is used, it's an issue to be decided at trial whether it is deceiving as opposed to pretrial motion practice," Jason Sultzer of The Sultzer Law Group, counsel for Luib, told Law360 on Monday. "We view this as a significant victory and will continue to prosecute this case vigorously on behalf of consumers."

Luib hit Henkel with the proposed class action in May, according to court records. He alleged the company violated New York false advertising and deceptive business practices laws, as well as the consumer protection laws in all 50 states.

Counsel for Henkel didn't immediately respond to a request for comment Monday.

Henkel is represented by Edward P. Boyle, Taylor Chapman, Elise Gabriel and Randall K. Miller of Venable LLP.

Luib is represented by Adam Gonnelli and Jason P. Sultzer of The Sultzer Law Group, George Granade II and Michael Reese of Reese LLP and Melissa W. Weiner of Halunen & Associates.

The case is Luib v. Henkel Consumer Goods Inc., case number 17-cv-03021, in the U.S. District Court for the Eastern District of New York.

--Editing by Alyssa Miller.

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