

## insights

TYPES NOT MAPPED YET October 06, 2016 | TTR not mapped yet | Kimberly (Kim) Bousquet

# Ninth Circuit holds juries can decide the definition of ‘natural’

On September 30, 2016, the 9th Circuit Court of Appeals issued a key decision in the food labeling war over what constitutes a false or misleading “all natural” label. At issue was a label on Dole’s food products stating that they contained “All Natural Fruit.” The plaintiff contended that the inclusion of synthetic ascorbic and citric acid rendered the “all natural” assertion false.

The court did not decide whether the plaintiff’s contention was true, but concluded that a trier of fact could conclude that (1) a description of Dole’s product as “All Natural Fruit” was misleading to a reasonable consumer, and (2) “that the synthetic citric and ascorbic acids in Dole’s products were not ‘natural.’”

The court relied on guidance issued by the U.S. Food & Drug Administration defining “natural” as “that nothing artificial or synthetic ... has been included in, or has been added to, a food that would not normally be expected to be in the food.” The court also noted that the FDA has issued warning letters to food sellers, accusing their 100% Natural or All Natural labels as deceptive because the products contained synthetic citric acid, among other substances.

The 9th Circuit ultimately concluded that the District Court erred in granting summary judgment for the defendant on the claims asserted, but affirmed the District Court’s decision to decertify the class because the plaintiff had not explained how damages could be calculated with proof common to the class. Practically speaking, this may bring the dispute to a swifter resolution, as the potential damages are severely reduced. The damages should be calculated, said the 9th Circuit, as the difference between the price customers paid and the value of the fruit they bought (i.e., the price premium), not the full refund value as the plaintiff contended.

Though this particular battle over the meaning of “all natural” may be winding down, the war will likely continue on as [the FDA has recently closed a comment period](#) on use of the term “natural” in food labeling.

Although the FDA has not announced any plans to establish a formal definition of the term “natural” when used on food labeling, the practical import of any revised informal guidance is obvious from the 9th Circuit ruling – courts will listen to what the FDA has to say.

The case is: CHAD BRAZIL, individually & on behalf of all others similarly situated, Plaintiff-Appellant, v. DOLE PACKAGED FOODS, LLC, Defendant-Appellee., No. 14-17480, 2016 WL 5539863, at \*1 (9th Cir. Sept. 30, 2016).

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