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Chamber Hopes to Forestall Food-Labeling Class Actions

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The U.S. Chamber of Commerce and at least one other business group intervened in the appeal of a class action in hopes of stemming food-labeling cases in California.

The case, brought in 2012, challenges the accuracy of labels on Chobani Greek yogurt and is among a number of class actions filed in the past two years raising food-labeling claims—particularly in the U.S. District Court for the Northern District of California, referred to by critics as the "food court."

The Chobani case focuses on whether consumers who alleged false and misleading labeling lacked standing to sue unless they could prove under California's Unfair Competition Law that they relied on those statements when they purchased the product. In 2004, that law was amended under the state's Proposition 64 to force plaintiffs to show they suffered injuries or lost money or property as a result of unlawful conduct.

On Feb. 20, U.S. District Judge Lucy Koh in San Jose dismissed the Chobani case, concluding that the plaintiffs lacked standing. The plaintiffs—three consumers filing on behalf of a California class—appealed to the U.S. Court of Appeals for the Ninth Circuit.

The U.S. Chamber of Commerce, seeking to affirm dismissal, called upon the Ninth Circuit to prevent a return of "shakedown" lawsuits that it said led to the passage of Proposition 64, according to an amicus brief filed on Friday. The food-labeling lawsuits have been brought under California's Sherman Food, Drug and Cosmetic Act, which like its federal counterparts prohibits companies from selling illegally misbranded products. The state's Unfair Competition Law has allowed plaintiffs attorneys to bring private causes of action.

The Chobani class action is the first of the recent cases to go before the Ninth Circuit, said Jeremy Rosen, a partner at Horvitz & Levy in Encino, Calif., who wrote the chamber's brief.

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"It's going to be important for the Ninth Circuit to affirm what the district court did," he said. "If there were a reversal here, that would again open up the floodgates to cases where people could sue without injury, which is exactly what Prop. 64 was designed to stop."

Plaintiffs attorney Darren Brown of Provost Umphrey in Beaumont, Texas, did not return a call for comment. Dale Giali, a partner in the Los Angeles office of Mayer Brown who represents Chobani LLC of Norwich, N.Y., did not respond to a request for comment.

The case specifically alleges that consumers were misled about a listed ingredient, "evaporated cane juice," which is really sugar, and that the label's claim of having "natural" ingredients was false because Chobani yogurts contained color additives.

On appeal, the plaintiffs argued that it was implausible that consumers—even health conscious ones—would necessarily equate evaporated cane juice with sugar. They also noted that the U.S. Food and Drug Administration has questioned whether evaporated cane juice should be listed on food labels.

Giali, in Chobani's brief, emphasized that the FDA hasn't issued final guidance on the issue and that ingredients added for color aren't necessarily unnatural.

"After four complaints and two years of litigation, the district court concluded that plaintiffs did not plausibly allege reliance on Chobani's labels in the manner pleaded and dismissed with prejudice," he wrote. "This is precisely the sort of case that California's statutory standing requirements are designed to foreclose."

In addition to the Chamber, the Washington Legal Center, a tort reform group, filed a similar brief in the case. On Monday, its chief counsel, Rich Samp, said: "It is high time to halt the deluge of food mislabeling claims being filed by plaintiffs lawyers under California's Unfair Competition Law."

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