

[Blogs](#)

February 10, 2015

Nationwide Putative Class Action Over “All Natural” Brown Rice Crisps Lives On

Bohlke v. Shearer's Foods, LLC, No. 9:14cv80727 (S.D. Fla.): In a putative class action alleging that Defendant misrepresents its Brown Rice Crisps products as being "All Natural" and containing "No Artificial Ingredients," when in fact they contain unnatural, synthetic, or artificial ingredients such as Masa Corn Flour, Canola Oil, and Maltodextrin, the Court granted in part and denied in part Defendant's motion to dismiss the amended complaint and denied Defendant's motion to strike the nationwide class-action allegations. In its motion to dismiss, Defendant argued that the Court should defer to the FDA regarding the meaning of the term "natural" under the primary jurisdiction doctrine. The Court followed other courts in rejecting Defendant's argument on the grounds that the FDA does not regulate "natural" claims. The Court, however, agreed with Defendant's argument that Plaintiff had no standing as to products that she did not actually purchase, and therefore dismissed claims related to flavors of brown rice crisps that Plaintiff did not purchase. The Court declined to dismiss claims based on different product labels, finding that issue more suitable for determination at the summary judgment. The Court also rejected Defendant's arguments that Plaintiff failed to state a claim. Defendant argued that Plaintiff's claim under Florida's Deceptive and Unfair Trade Practices Act ("DUTPA") the claim was barred by Florida's Food Safety Act ("FFSA"), that there was no plausible theory of actual damages, and that a reasonable consumer could not be deceived by the labels. The Court held that the FFSA does not preclude DUTPA claims, and found that Plaintiff had sufficiently alleged both a per se DUTPA violation and that Defendant's practices were "unfair and deceptive." The court also rejected Defendant's attack on Plaintiff's damages theories, holding that both the "price premium" theory of damages and the "valueless due to misbranding" theory were plausible enough to survive dismissal. Finally, the Court held that whether specific conduct constitutes an "unfair" or "deceptive" trade practice is a question of fact to be determined at a later stage. The Court also found that Plaintiff adequately pleaded reliance on defendant's misrepresentations and therefore stated a claim for negligent misrepresentation. The Court also rejected Defendant's argument that Plaintiff failed to adequately allege breach of express warranty, violations of the Magnusson-Moss Warranty Act, or unjust enrichment. The court held that Plaintiff sufficiently alleged that Defendant's products were not as represented and that defendant's false representations directly caused injury to plaintiff, who would otherwise not have purchased the products. In its motion to strike the nationwide class, Defendant argued that there could be no Rule 23 nationwide class because all claims were state claims and Florida's choice-of-law rules would require the Court to apply the laws of 51 jurisdictions. The Court held that since Plaintiff could ultimately choose to seek certification of a more limited and narrow nationwide class, Defendant's arguments were premature. The Court also noted that Rule 23's requirements do not apply to Rule 12(f) motions to strike, and are therefore such arguments are more properly addressed at the class certification stage. [Order.](#)

Explore more in

[Food & Consumer Packaged Goods Litigation](#) [Food & Beverage](#)