

Olive Oil False Labeling Suit Survives Dismissal

Kumar v. Salov North America Corp., No. 14-CV-2411-YGR (N.D. Cal.): A federal judge in California allowed most of a putative false labeling class action against Salov, the maker of Filippo Berio brand olive oil, to survive dismissal. Claiming violations of various California consumer protection statutes, common law fraud and deceit, breach of contract, and breach of the implied covenant of good faith and fair dealing, the plaintiff alleged Salov deceptively labeled its olive oil as "Imported from Italy" when the olives are not grown or pressed in Italy, and as "extra virgin" when the way the oil is bottled, transported, and stored allows it to degrade so that it may not be "extra virgin" by the time of sale or by the "best by" date. In moving to dismiss, Salov argued that a statement on the back label explains that the olives are grown and pressed in other countries, including Spain, Greece, and Tunisia, then shipped to Italy where they are blended and bottled for export. Salov contended the plaintiff must have seen this disclaimer because she admitted she read the "best by" date on the back label. The court rejected this argument, finding the plaintiff never said she read the statement and the court could not infer she had. Further, the court could not find as a matter of law that a reasonable consumer would not interpret "Imported from Italy" to mean the product was made exclusive from olives grown in Italy. The court also denied Salov's motion to dismiss the "extra virgin" claims. Salov claimed the plaintiff lacked standing because the specific bottle she purchased had not itself been tested and found not to be "extra virgin." The court disagreed, finding plaintiff's theory did not require she prove the particular bottle she purchased had, in fact, degraded to the point of not being extra virgin. Each consumer who purchases "extra virgin" olive oil is entitled to receive oil that meets that definition by design, not happenstance. Whether or not a particular bottle of oil had degraded to the point of not begin extra virgin does not defeat the claim. Turning to Salov's argument that the plaintiff lacked standing to seek injunctive relief because she could not be misled about the olive oil in the future, the court noted defendant's argument would lead to the result that a class action plaintiff alleging mislabeling could never seek injunctive relief on behalf of the class. The plaintiff had standing to seek injunctive relief because the allegedly false statements would continue to be false in the future, thus the possibility of future injury exists if the plaintiff encountered the same statements in the future and could not be any more confident that they were true. Salov also contended the plaintiff lacked standing because she only bought one product, but asserted class claims regarding multiple products. The court found this issue should be addressed at the class certification stage. The court did dismiss plaintiff's contract-based claims because a product label is not a contract and the plaintiff had not identified any contract between the parties. While a product label may support of breach of warranty claim, the plaintiff did not assert a warranty claim. [Order](#).

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