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Food & Consumer Packaged Goods Litigation

Sugar by Any Other Name: Plaintiff's Recent Challenge to "Dehydrated Cane Juice Solids" Fails

Health-conscious consumers continue to challenge the sugar content in foods, including sugar appearing in other forms, such as "dehydrated cane juice solids." But as one recent case shows, calling sugar by another name is not actionable alone if the product does not otherwise make representations about sugar content and accurately discloses sugar content on the nutrition facts panel. On December 3, 2021, the Eastern District of New York dismissed without prejudice a case alleging that Defendant's oatmeal "misled Plaintiffs into thinking the oatmeal contains only whole grains" when the product also contains "dehydrated cane juice solids," another term for sugar, and flax seed. The Court held, first, that Plaintiffs' claims were not preempted by federal law because "plaintiffs are not suing for a violation of the FDCA alone." But nevertheless, it held that Plaintiff's claims would not survive the reasonable consumer standard because Defendant's packaging was not materially misleading sufficient to state a New York General Business Law claim. Although the product represented that it was "100% Whole Grain – 18g or more per serving," consumers would not be misled about the sugar content because the package made "no representations that the oatmeal is 'sugar-free,' 'low in sugar,' 'without added sugar,'" or anything similar." A reasonable consumer could clarify any ambiguity by looking to the back of the box, where they would see "dehydrated cane juice solids" as the second ingredient and the disclosure "Sugar 11g" on the nutrition facts panel. For similar reasons, the Court also held that a reasonable consumer would not be misled about the sugar content allegedly coming from fruit sources because the package does not "bear slogans like 'contains fruit' or 'made with real fruit.'" Indeed, the product name "Oats & Flax" does not suggest fruit. And "Plaintiffs offer no reason why a reasonable consumer would conclude that 'cane juice' means 'fruit juice.'" The Court also dismissed Plaintiff's state common law claims for independent pleading failures. The case is *Amy Warren, et al. v. Whole Foods Market Group, Inc.*, No. 1:19-cv-06448-RPK-LB (E.D.N.Y. - Dec. 3, 2021), and the Court's opinion is available [here](#).

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