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Food & Consumer Packaged Goods Litigation

Plaintiff Could Not Clean Up Defendant's Hand Sanitizer Labeling

Artfully worded disclaimers are an increasingly powerful tool for food companies looking to protect their label claims, as the following case illustrates. On December 6, 2021, the Southern District of California tossed a case alleging that Defendant's hand sanitizer falsely claimed it "kills 99.99% of germs," followed by an asterisk that stated, "Effective at eliminating more than 99.99% of many common harmful germs and bacteria in as little as 15 seconds," because the product was "substantially ineffective against approximately 54 pathogens." The Court first held that Plaintiff failed to establish standing because he lacked a cognizable injury—"Plaintiff points to the Products alleged ineffectiveness....Yet nothing suggests that the Products did not accomplish their intended purpose to some degree." Further, Plaintiff's amended complaint "makes no representations that the alleged issues resulted in payment of a premium." Next, the Court held that, even if Plaintiff had established an injury, a reasonable consumer would not be deceived by the labeling. The Products are advertised as effective against "common" germs, and the Court noted that it was "hard pressed" to imagine that a reasonable consumer would assume polio, sexual transmitted diseases, food-borne illnesses, or pathogens found in cat litter and undercooked food, for example, to be "common" germs. And although Plaintiff alleged that the product was less effective "when hands are dirty, grimy or greasy," the Court stated, "that some consumers may not follow [Defendant's] instructions [for use] does not make the Products misleading." Plaintiff's statutory consumer protection claims were dismissed accordingly. The Court also dismissed Plaintiff's warranty and quasi-contract claims for lack of a misrepresentation. The case is *Anthony Moreno v. Vi-Jon LLC*, No. 3:20-cv-01446-JM-BGS (S.D. Cal. - Dec. 6, 2021), and the Court's opinion is available [here](#).

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