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Tenth Circuit affirms dismissal of false advertising class action predicated on puffery

by James F. Bogan III

In a recent post, we reported on the Second Circuit's affirmance of a district court order dismissing a false advertising class action based on alleged misrepresentations that amounted to nothing more than puffery. *See Second Circuit – false advertising class actions predicated on puffery are doomed to fail* (Sep. 28, 2021). The Tenth Circuit recently reached a similar result in *Renfro v. Champion Petfoods USA, Inc*., --- F.4th ----, 2022 WL 453366 (10th Cir. Feb. 15, 2022). In *Renfro*, pet owners filed a putative class action against Champion Petfoods, claiming that statements on Champion's dog food packaging were false and misleading. The statements advertised the dog food as "Biologically Appropriate," "Trusted Everywhere," and containing "Fresh and Regional Ingredients" as well as "Ingredients We Love [From] People We Trust." 2022 WL 453366, at *1. Based on these statements, the pet owners alleged seven causes of action, including violations of the Colorado Consumer Protection Act, breach of express and implied warranties, fraudulent misrepresentation and concealment, unjust enrichment, and negligence. But the district court granted Champion's motion to dismiss for failure to state a claim, reasoning that the alleged misrepresentations were "either unactionable puffery or overly subjective and therefore not materially misleading to a reasonable consumer." *Id*. On appeal, the Tenth Circuit affirmed, ruling that "the phrases fail to deceive or mislead reasonable consumers on any material fact." *Id*. These decisions by the Tenth and Second Circuits show that, although a district court deciding a Rule 12 motion must draw every inference in favor of a plaintiff, courts know puffery when they see it.