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Fine print prevails: Second Circuit affirms dismissal of deceptive business act claims against Stanley Black & Decker

by James F. Bogan III

Takeaway: Is a label clearly false or only ambiguously false? Where a label is ambiguous – and therefore subject to an interpretation that would render it deceptive – the ambiguity can be clarified by fine print. The fine print saved the day for Stanley Black & Decker in *Montgomery v. Stanley Black & Decker, Inc.*, No. 23-735-cv, 2024 WL 939151 (2d Cir. Mar. 5, 2024), where a Second Circuit panel affirmed the merits dismissal of a putative class action alleging that the labeling of Craftsman vacuum cleaners was misleading.

William Montgomery and Donald Wood claimed that the "Peak HP" labeling on the packaging of Craftsman vacuums was deceptive because the vacuums never reached the advertised horsepower. 2024 WL 939151, at *1. They asserted deceptive business practice claims under both the New York General Business Law (NYGBL) and the Virginia Consumer Protection Act (VCPA), as well as related warranty and common law claims. The District of Connecticut dismissed their claims, and the plaintiffs appealed that decision to the Second Circuit. *Id.*

The parties agreed on appeal that the NYGBL, VCPA, and related claims under New York and Virginia law depended on whether a "reasonable consumer" would have been deceived by the "Peak HP" representation.

But the fine print on the packaging disclosed that "Peak HP" referred to the horsepower achieved in laboratory testing rather than in ordinary use, and a dagger or asterisk symbol was displayed next to the words "Peak HP," directing consumers to the fine print and alerting them that certain exceptions could apply to the "Peak HP" representation. *Id.* "[C]ontext is crucial," said the panel, and product labeling is considered "as a whole, including disclaimers and qualifying language." *Id*. (quoting *Mantikas v. Kellogg Co.*, 910 F.3d 633, 636 (2d Cir. 2018)).

The panel agreed with the district court "that a reasonable consumer would not be misled because the language in the fine print" – which the plaintiffs did *not* allege was deceptive – disclosed that "Peak HP" was a "laboratory testing" and not an "ordinary use" representation. *Id*. Accordingly, "[a]lthough [plaintiffs] advanced one reasonable interpretation of what 'Peak HP' means, [they] fail[ed] to explain why a reasonable consumer could not alternatively understand 'Peak HP' to have the meaning reflected in the fine print." *Id*.

Montgomery and Wood also argued that the fine print was too small to clarify the meaning of "Peak HP." *Id.* at *2. But the complaint's "allegations merely state the obvious fact that the disclaimer was in fine print. Such fine print may clarify an ambiguous label on packaging." *Id*. (citations omitted). Even though the panel viewed the "Peak HP" designation as ambiguous and therefore potentially inaccurate,

plaintiffs “had to allege more than the bare fact that the disclaimer was in fine print and located at the bottom of the packaging.” *Id*.

The panel affirmed the district court’s dismissal, ruling that the complaint failed to state valid statutory claims under the NYGBL and VCPA and also failed to state valid warranty and common law claims.