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Ninth Circuit reverses class certification in deceptive advertising litigation, leading to “happy” result for egg producer

by [Stephanie N. Bedard](#)

A Ninth Circuit panel reversed a district court’s grant of class certification in a deceptive advertising action challenging “pasture raised” claims on egg cartons, holding that the plaintiffs failed to present common proof of deception. *Rusoff v. Happy Grp., Inc.*, --- F.4th ---, 2026 WL 2387098 (9th Cir. Aug. 17, 2026). The *Rusoff* court affirmed the district court’s exclusion of the plaintiffs’ industry-standards expert under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and held that without that expert’s opinion, the plaintiffs could not establish predominance under Rule 23(b)(3) based on materiality and damages alone. 2026 WL 2387098, at *6, *11.

The plaintiffs, Jonathan Rusoff and Joseph Gambino, brought a putative class action on behalf of California and New York consumers against The Happy Group, Inc. (“Happy Egg”), which produces eggs advertised as “pasture raised on over 8 acres.” *Id.* at *2. The plaintiffs did not allege that Happy Egg’s hens were kept in cages or that Happy Egg’s statements were actually false. *Id.* at *3. Instead, their theory of liability was that Happy Egg’s “pasture raised” claim deceptively implied compliance with the American Humane Association (“AHA”) and Humane Farm Animal Care (“HFAC”) certification standard, which the plaintiffs characterized as the dominant industry standards, and that consumers paid a price premium on that basis (even though Happy Egg did not identify either standard on its egg cartons). *Id.* To support this theory on a classwide basis, the plaintiffs relied on two experts: an industry-standards expert, who opined that the “standards promulgated by the AHA and HFAC . . . are the industry standard,” and a survey expert, who measured consumer perceptions of the “pasture raised” labeling. *Id.* at *4.

The district court excluded the industry-standard expert’s opinion under *Daubert*, concluding that although he was qualified, his methodology (which consisted of online research and photographing egg cartons in grocery stores near his home in Seattle) was unreliable. *Rusoff v. Happy Grp., Inc.*, No. 21-cv-08084-AMO, 2024 WL 5339463, at *5 (N.D. Cal. Sept. 27, 2024). The industry-standards expert performed his analysis outside California and New York (where the class members resided), testified that his visits were not intended to be representative of those states, and conceded that he applied “no methodology for taking pictures of cartons in stores” and “no scientific basis for the days he chose to visit those stores.” *Id.* The district court found that

without the reliable opinion of an industry expert establishing that AHA and HFAC standards were the dominant industry standards, the second expert's consumer perception survey could not anchor a classwide theory of deception. *Id.* at *12. Nonetheless, the district court still certified the class, finding that materiality and damages were common questions that predominated. *Id.* at *13, *15.

The Ninth Circuit affirmed the exclusion of the industry-standards expert opinion and reversed class certification. Judge Bress held that the industry-standards expert's methodology "did not meet the standards expected of an expert witness evaluating consumer understanding of egg industry standards." 2026 WL 2387098, at *6. The *Rusoff* court also rejected the plaintiffs' argument that *Daubert* had no role to play at the class certification stage. *Id.* at *9 (citing *Sali v. Corona Reg'l Med. Ctr.*, 909 F.3d 996, 1006 (9th Cir. 2018)).

As for predominance, the Court of Appeals held that without the industry expert's excluded opinion, the plaintiffs lacked "common proof connecting the allegedly dominant industry standards to consumer perceptions." *Id.* at *8. Even though California's and New York's deceptive advertising statutes employ an objective "reasonable consumer" standard, "a plaintiff must first show, on a classwide basis, what deceptive marketing or false advertising a reasonable consumer could have been misled by." *Id.*

The Ninth Circuit further held that the district court erred in certifying the class based solely on common issues of materiality and damages, reasoning that deception is the "central element" of the plaintiffs' claims and that the "lack of a classwide showing on deception cannot be overcome by supposedly common issues of materiality and damages that are unmoored from any classwide showing of actionable wrongdoing." *Id.* at *11. If a defendant's representations were material but not deceptive, the plaintiffs would have no viable case at all. *Id.*

Takeaway: The *Rusoff* decision underscores *Daubert*'s importance at the class certification stage and that common issues of materiality and damages cannot independently establish predominance in a deceptive advertising class action when the plaintiffs lack classwide proof of deception. Defense counsel opposing class certification in deceptive advertising cases should consider early *Daubert* challenges to expert methodology to undercut the evidentiary foundation of a classwide theory of liability.