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California federal judge certifies unfair competition and false advertising class action against Barilla

by **Celina Cotton**

A federal judge in California certified a class in an action alleging unfair competition and false advertising against Barilla America, Inc. ("Barilla").

In *Sinatro v. Barilla America, Inc.*, No. 22-cv-03460-DMR, 2024 WL 2750018 (N.D. Cal. May 28, 2024), Matthew Sinatro and Jessica Prost filed a class action suit against Barilla alleging false advertising and deceptive marketing based on Barilla's pasta-brand labeling. The plaintiffs alleged that Barilla intentionally mislabeled their brand pastas for decades as "ITALY'S #1 BRAND OF PASTA," with the goal of misleading consumers into believing that Barilla's products were made in Italy. 2024 WL 2750018, at *1-2. The plaintiffs alleged that, without this misleading statement, consumers would have been less likely to purchase or pay more for Barilla products. *Id.* at *2.

The plaintiffs asserted claims for violations of California's false advertising and unfair competition laws, as well as corresponding common law claims, and sought certification of a class of California residents who purchased Barilla products containing the challenged labels on Barilla's front packaging. *Id.* The plaintiffs also moved to exclude testimony from one of Barilla's experts, asserting that the expert lacked the requisite background and training to design surveys and that the expert's surveys were unreliable and methodologically flawed. *Id.* at *3. The district court granted the plaintiffs' motion for class certification and denied as moot the plaintiffs' motion to exclude, finding that the expert's opinions did not bear on whether the class should be certified and instead went to the merits of the plaintiffs' claims. *Id.* at *4, *12.

Barilla did not dispute that the putative class was sufficiently numerous, and the district court rejected an ascertainability requirement; found that the putative class met the commonality, typicality, and adequacy requirements of Rule 23(a); and ruled the proposed class satisfied the predominance and superiority requirements of Rule 23(b). *Id.* at *5-12.

Ascertainability: Barilla had argued that the class was not ascertainable because it was impossible to determine which class members were exposed to the challenged label before Barilla updated its packaging. *Id.* at *5. The district court rejected this argument, finding that Barilla had failed to cite binding Ninth Circuit authority holding there is no separate "ascertainability" or "administrative feasibility" requirement for class certification. *Id.* (citing *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1131, 1132-33 (9th Cir. 2017)).

Commonality: For the false advertising and consumer deception claims, the court found that surveys conducted by the plaintiffs' experts showed that common evidence could be used to demonstrate consumer deception and determined that Barilla's merits-based challenges to those surveys were premature. *Id.* at *7. For the breach of warranty and unfair competition claims, the court found the materiality of the challenged label was a common question within the class, even though the materiality

determination itself was premature. *Id.* at *8. For the unjust enrichment claims, the district court found that Barilla's alleged misrepresentation was a common issue for class treatment. *Id.* at *9.

Typicality: Barilla argued the named plaintiffs' claims were atypical because they did not read other information on the challenged label explaining the product was made in the United States. *Id.* The court rejected this argument, finding that the test for California consumer protection statutes is objective and "does not turn on the claimant's particular state of mind." *Id.* (citing *Ries v. Arizona Beverages USA LLC*, 287 F.R.D. 523, 539 (N.D. Cal. 2012)). In other words, "individual experience with a product is irrelevant." *Id.* (citing *Astiana v. Kashi Co.*, 291 F.R.D. 493, 502 (S.D. Cal. 2013)).

Finally, the court found that class counsel would fairly and adequately protect the interests of the class; questions of law or fact common to class members predominated over any questions affecting only individual members; damages were capable of measurement on a class-wide basis; and a class action would be superior to other available methods for fairly and efficiently adjudicating the dispute. *Id.* at *10-12.

Takeaways: The *Sinatro* decision illustrates the impact of Ninth Circuit law favoring class certification —including the lack of an ascertainability requirement and a willingness to defer consideration of the reliability of expert opinions until after a class has been certified—on common arguments advanced by defendants defending claims of deceptive labeling.