

February 28, 2023

Malic Acid Malady: Defendants Prevail in Consumer Class Actions Challenging “100% Natural” and “Natural Flavor” Beverage Labels

by [Evan S. Nadel](#)

Takeaway: In a pair of putative class actions, plaintiffs challenged Fanta’s “Piña Colada” soda’s “100% Natural Flavors” claim and a MiO flavored drink concentrate’s claims of containing Mango and Peach “natural flavor with other natural flavor.” Judge Karas of the Southern District of New York granted motions to dismiss both cases, which included claims alleging deceptive and misleading business practices in violation of New York General Business Law (GBL) sections 349 and 350. In both cases, filed by the same law firm, the plaintiffs alleged that the product labels were false because the products contain “artificial flavoring ingredients,” specifically malic acid shown in the ingredient list of each product. Because the plaintiffs, despite referring to supporting lab tests, failed to plead plausible facts showing that the products contained *artificial* malic acid—as opposed to the naturally occurring type—their complaints were inadequate. These cases demonstrate that a perceptive judge will not permit consumer fraud cases to survive pleadings challenges based on a plaintiff’s speculation that “all natural” or similar product claims are false.

In *Hawkins v. Coca-Cola Co.*, No. 21-CV-8788 (KMK), 2023 WL 1821944 (S.D.N.Y. Feb. 7, 2023), the named plaintiff Ms. Hawkins alleged that Fanta’s “piña colada flavored” soda falsely claimed the beverage contains “100% Natural Flavors,” a statement made on the front label above pictures of a half a coconut and a pineapple wedge. Her complaint noted that the ingredient list includes malic acid but fails to disclose that “this malic acid is an artificial flavoring ingredient”—specifically DL-Malic Acid, which does not occur naturally, rather than L-Malic Acid, which does occur naturally in fruits. 2023 WL 1821944, at *1. The complaint alleges that “laboratory analysis concluded this Product contains artificial, DL-Malic Acid instead of natural, L-Malic Acid.” *Id.* Plaintiff alleged violations of GBL sections 349 and 350, common law breach of express warranty, and fraud.

The court granted Coca-Cola’s motion to dismiss, ruling that plaintiff had failed to plausibly allege that its product label would be misleading to a reasonable consumer. The court recognized that the inquiry into whether “a significant portion” of the consuming public might reasonably be misled is ordinarily a question of fact not suited for resolution on the pleadings. *Id.* at *5. The court noted that the ingredient list includes “natural flavors” (apart from its inclusion of “malic acid”) and that the plaintiff conceded she was “unable to learn [if] the malic acid listed in the ingredients is the artificial version without a chemistry kit and detailed knowledge of the relevant regulations.” *Id.* at *6. Because plaintiff acknowledged that the product contains *some* natural flavors, the court held that her allegation it “does not disclose that malic acid is an artificial flavoring ingredient” was conclusory. *Id.* at *7.

The court discounted the allegation that “laboratory analysis” concluded that the product contains DL-Malic Acid, the artificial type. *Id.* Although the court accepted this allegation as true, as required on a motion to dismiss, it deemed it a “far cry from raising ‘any factually substantiated allegations’ that the Product contains artificial malic acid, rather than natural malic acid.” *Id.* The court cited holdings in the recent so-called “Vanilla Cases” (which challenged product claims concerning vanilla), including one criticizing an allegation about a lab test for failing to provide details of the test, such as “the testing methodology followed, the specific date, time, or place of the testing, who conducted the testing, the qualifications of the testers, etc.” *Id.* The lack of sufficient allegations rendered the lab statement conclusory and thus inadequate.

The court also rejected the plaintiff’s argument that the Fanta label violated FDA regulations governing how food flavorings are labeled, particularly those requiring the word “artificial” to describe beverage flavors. *See id.* at *8 (citing 21 C.F.R. § 101.22(a)(1)). In addition to ruling plaintiff lacks a claim for private enforcement of FDA regulations, the court also ruled the FDA regulations could not serve as the basis for plaintiff’s GBL claim because “the conduct alleged to violate the FDA regulations is not so inherently deceptive as to be misleading to a reasonable consumer under GBL §§ 349-50.” *Id.* (citation omitted). For similar reasons, the court found plaintiff’s other claims deficient. Because the plaintiff had amended her complaint once before and did not explain what additional facts she could plead, the court granted the motion to dismiss with prejudice, ending the case. *Id.* at *10.

In *Hoffman v. Kraft Heinz Food Co.*, No. 22-CV-397 (KMK), 2023 WL 1824795 (S.D.N.Y. Feb. 7, 2023), the plaintiff raised similar deceptive labeling claims about the defendant’s Mango Peach MiO product, a flavored liquid beverage concentrate with “Mango Peach Natural Flavor with other natural flavors” printed on the front of the label. As with the Fanta product, the MiO product’s ingredient list included “malic acid.” Plaintiff’s counsel again alleged that “laboratory analysis concluded the Product contains artificial DL-Malic Acid instead of natural, L-Malic Acid.” 2023 WL 1824795, at *1.

The court’s dismissal in *Hoffman* tracked its analysis in the Fanta case. Because the plaintiff conceded that “there are likely *some* natural flavors within the product, namely mango and peach” and again relied on the single, conclusory “laboratory analysis” allegation, his complaint alleged only “the *possibility* that the Product contains artificial DL-Malic acid.” *Id.* at *8. Lacking the required “factually substantiated allegations,” plaintiff’s GBL §§ 349-50 claim was inadequate. *Id.* at *8-9. Similarly, the court rejected the plaintiff’s argument that the product’s labeling violated FDA regulations and his related claims that defendant violated other states’ consumer protection acts, breached an express warranty, and committed fraud. *Id.* at *9-12. Once again, the court dismissed the complaint with prejudice because the plaintiff had already amended once and failed to identify facts he could plead to cure the deficiencies in his claims. *Id.* at *12.

These two cases establish that plaintiffs challenging product labeling claims—such as “all natural,” “100% natural,” or the like—must do more than allege the *possibility* that such statements are misleading or deceptive. Even when relying on alleged laboratory tests to help substantiate such claims, plaintiffs cannot progress beyond the pleadings unless they plead such facts with enough detail to reasonably support the allegations. In other words, “we did a test” is not a magic wand that can make a motion to dismiss disappear and a settlement check materialize.