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Third Circuit affirms dismissal of class's warranty claims challenging Whirlpool's use of Energy Star logo

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The Third Circuit affirmed the dismissal of a consumer class action against Whirlpool Corp. and various retailers of Whirlpool's washing machine products after determining that an energy efficiency logo on three of Whirlpool's washing machines did not create an express warranty that the machines complied with new energy efficiency standards. *Dzielak v. Whirlpool Corp.*, 83 F.4th 244 (3d Cir. 2023). In so ruling, the Third Circuit considered whether a manufacturer's use of an energy efficiency logo, which was owned by a third party as a certification mark, could impose an express warranty on the manufacturer.

The EPA approved Whirpool's display of its Energy Star logo

In 1992, the Environmental Protection Agency ("EPA") introduced the Energy Star Program as a voluntary labeling program for energy-efficient products, regulated by both the EPA and the Department of Energy ("DOE"). 83 F.4th at 250. In 2008, the EPA introduced its Energy Star logo, which appears as follows:

ENERGY ENERGY STAR, Reg. No. 3,569,551; 83 F.4th at 251-52. As the owner of the mark, the EPA authorized manufacturers to display the mark on their products if they met certain efficiency standards. *Id.* at 252.

From April 2009 to December 2010, Whirlpool's predecessor Maytag manufactured and marketed three models of top-loading washing machines that had been approved to display the Energy Star logo. *Id.* at 255-56.

In July 2010, the DOE issued new requirements for washing machine energy efficiency. *Id.* at 249. While the three washing machines met the Energy Star Program's efficiency standards under the prior requirements, they did not satisfy the standards under the new metric. *Id.* Though Whirlpool was permitted to continue displaying the Energy Star logo on the three washing machine models until February 2011, it instead voluntarily discontinued manufacturing the washing machines in December 2010. *Id.* at 249, 256.

The district court granted summary judgment in favor of Whirlpool and the retailer defendants

In January 2012, the named plaintiffs initiated a class action against Whirlpool and a number of its retailers, alleging claims for breach of express warranty, violations of state consumer-protection statutes, and other theories of relief. *Id.* at 249. Each of the named plaintiffs had purchased one of the washing machines between November 2009 and December 2010. *Id.* at 256. The district court certified a class against Whirlpool only. *Id.* at 257. Whirlpool and the retailer defendants moved for summary judgment, and Whirlpool moved to decertify the class. *Id.* In 2019, the district court granted the summary judgment motions and denied Whirlpool's decertification motion as moot. *Id.*

The Third Circuit analyzed Plaintiffs' express warranty claims over the Energy Star logo

On appeal, the Third Circuit considered three theories for determining whether a third party's certification mark could create an express warranty. The Third Circuit affirmed that, under each theory, Whirlpool's display of the logo did not breach any express warranty to its customers about the energy efficiency of its products:

1. ***The Authorized Use Theory***: Under the narrowest of the three theories, Whirlpool's use of the certification mark indicates only that the EPA and DOE had authorized the use of the Energy Star logo in Whirpool's product labeling and marketing. As the EPA and DOE had in fact authorized Whirlpool to use the logo, the Third Circuit found that the warranty was not breached under this theory. *Id.* at 260-61.

2. ***The Certification-Statement Theory***: The second approach looks to whether the logo's use conformed with its registration application with the U.S. Patent and Trademark Office ("USPTO"), where the EPA had specified that displaying the logo would indicate that the product was more energy efficient than most products sold in the same category. The Third Circuit rejected this theory, finding that it would improperly impose responsibility for the accuracy of the logo's use on its authorized users, rather than solely on the logo's registered owner. The Third Circuit reasoned that to hold otherwise "would expose authorized users of a certification mark to liability for the lax oversight or wrongful approval of their products by the mark's

owner," which could discourage the use of the mark. *Id.* at 262.The Third Circuit also found that even if this theory were valid, the three washing machine models were in fact more energy efficient than most products sold in the same category. *Id.* at 261-63.

3. ***The Absolute-Compliance Theory***: The third and broadest approach looks to whether the logo's ordinary meaning or established industry and regulatory meaning permitted a fair understanding that a product bearing the Energy Star logo met the more stringent July 2010 efficiency requirements.As to the ordinary meaning, the Third Circuit found that there was insufficient evidence than ordinary consumers would have understood the specific requirements of the Energy Star Program. As to the specialized meaning, the Third Circuit found that the efficiency requirements prior to July 2010 were ambiguous and thus did not expressly warrant that the product met a certain efficiency standard. *Id.* at 263-66.

After finding that Whirlpool's use of the Energy Star logo did not breach any express warranties to its washing machine purchasers, the Third Circuit also affirmed that Whirlpool did not make any false or misleading statement or act in a deceptive manner by displaying the Energy Star logo and thus could not be held liable for the plaintiffs' state law consumer protection claims. *Id.* at 266.

Takeaways: The *Dzielak* decision could have broader implications for manufacturers and retailers facing false labeling claims involving certification marks. Under the Third Circuit's reasoning, determining whether the use of a certification mark like the Energy Star logo is proper turns on whether the manufacturer had authority to use the mark and whether there is an ordinary and industry consensus on the appropriate use of the mark. The Third Circuit also hinted that a consumer impacted by the improper certification of a product "could seek redress from the mark's owner" as opposed to the user of the mark. *Id.* at 262.