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False advertising class actions – "complete multivitamin" misrepresentation enough to state claims under New Jersey and Florida law

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Takeaway: Where a plaintiff alleges that product labeling does not comply with pronouncements by the Food & Drug Administration (FDA), it can be difficult for a class defendant to obtain the dismissal of false advertising claims. In *Devane v. Church & Dwight Co.*, Case No. 3:19-cv-09899-BRM-LHG, 2020 WL 998946 (D.N.J. Feb. 28, 2020), the District of New Jersey ruled that alleged misrepresentations that multivitamins were "complete" adequately stated false advertising claims under New Jersey and Florida law, given that the multivitamins did not contain certain vitamins necessary (according to the FDA) to constitute "complete" multivitamins.

The class plaintiffs – individuals from New Jersey and Florida who purchased multivitamins from Church & Dwight – allegedly purchased the multivitamins relying on product marketing and labeling touting the vitamins as "complete multivitamins" containing all "essential nutrients." The vitamins, however, allegedly did not contain all of the vitamins identified by the FDA as "necessary for human health," including vitamin K, thiamin, and riboflavin. The class plaintiffs further claimed they were duped by this allegedly false advertising to buy vitamins that were "completely valueless," entitling them to recover all of the money spent to buy them.

These allegations were enough to state the plaintiffs' core claims against Church & Dwight, although some of the claims were dismissed. The district court ruled that the allegations adequately demonstrated an Article III injury-in-fact; adequately alleged an ascertainable loss under an "out-of-pocket theory" under the New Jersey Consumer Fraud Act; adequately pled a deceptive practice, causation, and actual damages under Florida's Deceptive and Unfair Trade Practices Act; and adequately alleged a claim for breach of implied warranty under New Jersey law (*i.e.*, breach of the alleged warranty to provide a "complete multivitamin").

The district court did rule the plaintiffs lacked standing to seek injunctive relief, because they could not be deceived in the future as to whether the vitamins were "complete." The district court further dismissed claims for breach of express warranty under Florida law (for failure to provide pre-suit notice) and for breach of implied warranty under Florida law (for lack of privity, given that the plaintiffs did not buy the vitamins directly from Church & Dwight).