



# Ninth Circuit Clarifies Scope of Preemption Defense to Claims Based on Federally Approved Product Labels

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## Key Takeaway

Where a federal agency has reviewed and approved a product label pursuant to a federal statute, claims brought under state laws challenging that label are preempted—however, preemption will not apply to claims premised on statements that are “materially different” from those reviewed.

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In *Cohen v. Conagra Brands*, the plaintiff brought a class action lawsuit alleging that ConAgra falsely labeled and advertised its frozen-chicken products as “natural” and “without preservatives,” among other statements, despite the products allegedly containing synthetic ingredients. A federal statute—the Poultry Products Inspection Act (“PPIA”)—requires that certain labels for poultry products be approved by a federal agency before the products become available on the market.

The United States Court of Appeals for the Ninth Circuit recently examined the ability of the PPIA to preempt state-law claims, such as those under California’s Consumer Legal Remedies Act, Unfair Competition Law, and False Advertising Law. The court held that where an agency has reviewed and approved a food label, that determination preempts claims under state laws that the label is false or misleading but that the defense does not apply to nonidentical statements the agency is not tasked with reviewing, such as those made on a website.

The Ninth Circuit agreed with the district court that if the USDA’s Food Safety and Inspection Service had indeed approved Conagra’s labels, that approval would preempt the plaintiff’s state-law false-advertising claims. The Ninth Circuit remanded the case to the district court, instructing the parties to submit evidence showing whether the Conagra label itself was in fact reviewed and approved.

The Ninth Circuit also held that the PPIA did *not* preempt the plaintiff’s state-law claims with respect to statements made on Conagra’s website—which, in addition to claims that were also on the product label (“made with 100% natural, white meat chicken”), contained the statements “without preservatives, artificial flavors, or artificial colors,” which the Ninth Circuit deemed “materially different” from the statements on the product label.

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