



Illinois District Court Rules That Reasonable Costco Customers are Flavor Savvy

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KEY TAKEAWAY:

Class action lawsuit against Costco based on “unreasonable or fanciful interpretations of labels” warrants dismissal.

Consumers may have a lot of choices while grocery shopping, but according to a district court in Illinois, the reasonable consumer knows the difference between “flavor” and “ingredient.”

In September 2021, Plaintiff Timothy Akers filed a class action complaint against Costco Wholesale Corporation, alleging that Costco’s Kirkland Signature Sparkling Black Raspberry Flavor misled consumers to believe the drink is derived primarily from the fruit due to its language “Black Raspberry Flavor,” red hue, and picture of two black raspberries on the label. Plaintiff also claimed that the front label failed to disclose an artificial ingredient – malic acid – which Plaintiff alleged was meant to mimic the tartness of black raspberries and further misled the consumer.

Costco moved to dismiss, arguing that the inclusion of malic acid as an ingredient was as a Ph control agent and that the label is not misleading. Chief U.S. District Judge Rosenstengel from the Southern District of Illinois agreed, applying the “reasonable consumer standard” and determined that a significant portion of consumers would not be misled when reading the front label. Judge Rosenstengel cited the legal test established by the Seventh Circuit: “unreasonable or fanciful interpretations of labels” warrant dismissal. She concluded that the reasonable consumer understands that “black raspberry is clearly a flavor claim, not an ingredient claim” and will use context clues such as the suggestion on the label that the bottle contains zero calories. Furthermore, the malic acid’s primary purpose is to balance pH levels, not to add flavor to the drink. Plaintiff also seemed to concede Costco’s contention that the bottle contains some black raspberry, and Costco made no claims as to quantity. The court distinguished the allegations from cases in which the labels purportedly misled consumers with statements such as “no artificial flavors” or “naturally flavored” and concluded that it was “implausible that the packaging would mislead a reasonable consumer.” For these reasons, Judge Rosenstengel dismissed the complaint without prejudice.

Turns out there is no malice in a little malic acid.

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