



Ambiguous Front Label Does Not Prove Fatal: Looking to the Back, 9th Circuit Cuts Front Label Some Slack

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Key Takeaway

The Ninth Circuit Court of Appeals held in two companion cases that courts properly can consider the wording on the back labels of products to clarify any ambiguous claims on the front labels.

On June 9, 2023, the Ninth Circuit Court of Appeals affirmed the dismissal of California consumer protection claims against The Procter & Gamble Company (P&G) in *McGinity v. Procter & Gamble Co.*, App. No 22-15080 (9th Cir. June 9, 2023). The plaintiff alleged that the labels on P&G's "Nature Fusion" shampoos and conditioners were misleading because the products are purportedly "substantially unnatural."

The Court held that the front labels were ambiguous because the words "Nature Fusion" and the image of an avocado on a leaf on the front labels "could mean any number of things," including that the products were made with a mixture of natural and synthetic ingredients or that the products were made with a mixture of different natural ingredients. Consequently, the Court ruled that any ambiguity on the front label can be resolved by reference to the back label. The Court then explained that the back label put reasonable consumers on notice that "Nature Fusion" referred to the product's avocado oil and clarified that the products contained both natural and synthetic ingredients. Thus, the Court limited the scope of its earlier ruling in *Williams v. Gerber*¹ and brought the Ninth Circuit in line with other circuits on the issue.

In a concurring decision by Judge Gould in which Judge Berzon joined, Judge Gould expressed the view that the "Nature Fusion" labeling resembles a practice known as "greenwashing." Greenwashing involves misrepresentations about the environmental impact of a product that may deceive customers seeking environmentally-friendly products. Judge Gould advised companies to abide by the Federal Trade Commission's Green Guides, which discourage broad environmental claims like "green" or "eco-friendly" while also providing general principals to avoid unintentionally deceiving consumers about the contents of a product. The concurring opinion serves as a reminder to companies to tread carefully over "green" terrain.

On that same day, the Ninth Circuit similarly held in an unpublished companion decision in *Steinberg v. Icelandic Provisions, Inc.*, App. No. 22-15287 (9th Cir.), that courts properly can consider the wording on the back labels of products to clarify ambiguous claims on the front labels, citing *McGinity*.

Law Clerk Heather Donato also contributed to this blog post.

^m *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 939 (9th Cir. 2008).
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