

Winston Proves Pet Food False Advertising Claims are All Bark and No Bite

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Winston earned a major victory for clients J.M. Smucker Company and Big Heart Pet Brands when a unanimous Sixth Circuit affirmed the district court's dismissal of plaintiff's false advertising claim under the Lanham Act and denial of leave to amend.

In 2016, pet food manufacturer Wysong Corporation sued six of America's biggest pet food manufacturers for deceptive marketing practices in their pet food packaging. Wysong argued that the defendants used false or misleading images of "premium" meats, poultry, fish, and vegetables on their packaging that did not fairly represent the actual ingredients of the pet food. All defendants moved to dismiss, arguing the claims were implausible as a matter of law. After the submission of hundreds of pages of briefing and a three-hour oral argument, the district court sided with defendants, finding Wysong's allegations did not support a claim for either literal or implied falsity under the Lanham Act and denying Wysong's request to amend.

On appeal, the Sixth Circuit soundly agreed. It denied Wysong's literal falsity claim, explaining that consumers could understand that defendants' pet food packaging indicated the *type of animal* from which the pet food was made, but not necessarily the precise *cut* used. It also rejected that the packaging was "misleading," finding that Wysong failed to explain how each image could mislead consumers in light of the context of the advertisement. As the Sixth Circuit stressed: "Common sense dictates that reasonable consumers are unlikely to expect that dog food is made from the same meat that people eat." It also affirmed the denial of leave to amend.

The Winston team consisted of Partner Ron Rothstein and Associate Kerry Donovan. Matthew Olsen assisted with the appeal.

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