

New York Judge Lifts 2-Year Stay on KIND “All Natural” Suit

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- A New York federal court ordered a consumer class action against KIND LLC to move forward after a two-year stay. Consumers are suing KIND for allegedly mislabeling its snack products as both “non-GMO” and “all natural,” even though the products purportedly contain synthetic and genetically modified ingredients. On September 15, 2016, U.S. District Judge William H. Pauley III stayed the “all natural” claims pending possible new FDA guidelines on use of the term. At the time of the stay, the court stated that it would “reconsider the appropriateness of continuing the stay as the FDA’s process unfolds.” The “non-GMO” claims were stayed in 2018 to avoid splitting the two issues apart.
- As a reminder, in November 2015, the FDA published a Request for Information and Comments regarding the use of the term “natural” in the labeling of food products, including foods that are genetically engineered or contain ingredients produced with genetic engineering. See [80 FR 69905 \(Nov. 15, 2015\)](#). Although the comment period closed in May 2016, FDA has not taken any further action on this matter.
- In 2018, Judge Pauley denied both KIND’s motion to dismiss and the consumers’ request to lift the stay on their “all natural” claims. The stay was to be in effect, and subsequently reconsidered, until August 15, 2018. However, six months have now passed since the court deadline, and thus Judge Pauley decided to lift the stay. Judge Pauley stated that there is “no indication whether the FDA is earnestly working toward a uniform ‘natural’ standard, or whether it has shelved that effort. [...] As such, this court explained that it ‘cannot sit idly by on an illusory assurance that something is likely to happen.’”
- As we’ve previously posted on this blog, “natural” and “all natural” lawsuits have been the focus of much litigation in recent years. And as this court order indicates, such suits do not appear to be slowing down.

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