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Court Lets Trader Joe's Out of Sticky Situation Over Honey Advertising

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A magistrate judge in the Northern District of California recently dismissed a putative class action **alleging that Trader Joe's misled its consumers about the purity of its manuka honey**. *Moore v. Trader Joe's Co.*, No. 4:18-CV-04418-KAW, 2019 WL 2579219 (N.D. Cal. June 24, 2019).

Plaintiffs commenced a putative class action lawsuit alleging that Trader Joe's engaged in "false, misleading, and deceptive marketing" by representing that its Trader Joe's Manuka Honey product was "entirely" manuka honey when, purportedly, the product's manuka honey content had been "adulterated by the inclusion of cheaper honey." Manuka honey is produced from the nectar of New Zealand's manuka tree and is said to have numerous medicinal benefits.

Plaintiffs specifically challenged the product's "100% New Zealand Manuka Honey" label and the ingredient statement that lists "manuka honey" as the sole ingredient because Plaintiffs' laboratory tests demonstrated that only between 57.3% and 62.6% of the pollen found in the product was from the manuka flower, with the remainder deriving from "other floral sources." Plaintiffs claimed Trader Joe's mixed manuka honey with non-manuka honey, and in doing so violated "consumer protection and similar laws in all fifty states" – which allegedly incorporate the adulteration and misbranding provisions of the Federal Food, Drug, and Cosmetic Act (the "FDCA") – and committed common-law fraud and breach of warranty.

In her opinion, Magistrate Judge Kandis A. Westmore cut straight to the point and

rejected Plaintiffs' argument that the honey was adulterated. Citing hearing testimony, she noted that Plaintiffs' adulteration allegation was premised on "bees visiting different floral sources and returning to the hive resulting in a lower manuka pollen count, rather than the manufacturer purposefully mixing Manuka honey with non-manuka honey." Under Section 342(b) of the FDCA, a product is adulterated only:

(1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

None of those definitions was met in this case, Judge Westmore held, because any impurities in the honey were introduced by the bees that made it, and not by Trader Joe's. She, therefore, granted Trader Joe's motion to dismiss without leave to amend as plaintiffs "could not plead sufficient facts to support their adulteration theory." Judge Westmore also ruled that to the extent the applicable state laws imposed different standards than the FDCA, they were preempted.

Along similar lines, Judge Westmore found that the product's label was not misleading. According to FDA guidance, honey is a "single ingredient food" that may be labeled with the plant or blossom name so long as that plant or blossom is the "chief floral source." Trader Joe's argued that "100%" in the phrase "New Zealand Manuka Honey" could refer to either manuka honey or the fact that the honey comes entirely from New Zealand. Because Plaintiffs' adulteration theory failed and the "chief floral source [was] undisputedly Manuka," Judge Westmore held that the label was accurate and that a reasonable person would not be misled. She dismissed Plaintiffs' common law fraud and breach of express warranty causes of action on similar grounds.