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Made in the USA: False US-origin labeling class actions dismissed

Country of origin labeling (COOL) is more than a "cool" marketing opportunity – it is a labeling law.

Class action dismissal

Last month, the District of New Mexico dismissed two proposed class action lawsuits accusing four food industry giants of falsely labeling beef products as "Product(s) of the USA." The consumers claimed the cattle were actually "raised in foreign countries, imported into the United States live, then slaughtered and processed in the United States."[1] The first putative class of consumers claimed they were deceived into paying higher prices for American beef when what they bought was really foreign beef. The second putative class was American Ranchers who allegedly receive less for their American cattle because of the influx of imported cattle sold as product of the USA.

The Court dismissed the consolidated lawsuit primarily on the grounds that the country of origin dispute is preempted under Federal law (beef labels at issue were approved by USDA). The case is now pending appeal before the 10th Circuit.

Regulatory background

COOL is a United States of America labeling law that requires retailers to notify their customers with information regarding the source of certain foods.[2]

Labels on beef products are subject to the Federal Meat Inspection Act (FMIA), codified at 21 U.S.C. § 601, et seq. Meat products may not be sold "under any … labeling which is false or misleading, but … labeling and containers which are not false or misleading and which are approved by the Secretary are permitted."[3] The FMIA allows the USDA to ban labeling for meat products that it finds to be false or misleading.[4] The USDA regulates beef labels through its Food Safety and Inspection Service (FSIS). FSIS administers a label approval program.[5]

Under the USDA Food Standards and Labeling non-binding Policy Book, "[l]abeling may bear the phrase "Product of U.S.A." under one of the following conditions: (1) If the country to which the product is exported requires this phrase, and the product is processed in the U.S., or (2) The product is processed in the U.S."

The FSIS explained this policy in a proposed rule:

"'"Product of the U.S.A." has been applied to products that, at a minimum, have been prepared in the United States. It has never been construed by FSIS to mean that the product is derived only from animals that were born, raised, slaughtered, and prepared in the United States. The only requirement for products bearing this labeling statement is that the product has been prepared (i.e., slaughtered, canned, salted, rendered, boned, etc.). No further distinction is required. … This term has been used on livestock products that were derived from cattle that originated in other countries and that were slaughtered and prepared in the United States."[6]

Therefore, the District of New Mexico concluded, based on FSIS determinations, that "cattle born and raised in a foreign country but slaughtered in the United States may use the "Product of the USA" label."[7]

The jury is out on how the appellate court will rule, but one thing is certain – food industry companies must be vigilant in monitoring food labeling regulations to avoid litigation and regulatory scrutiny.

[1] Thornton v. Tyson Foods, Inc., No. 1:20-CV-105-KWR-SMV, 2020 WL 5076083, at *1 (D.N.M. Aug. 27, 2020)

[2] 7 CFR Part 60 and 7 CFR Part 65.

[3] Id. at §607(d).

[4] Id. at §607(e).

[5] 9 C.F.R. § 317.8(a).

[6] 9 CFR Parts 317 and 327.

[7] Thornton, at *3.

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