

Muslim Woman's Vitamin Label Claims Preempted, Judge Says

By **Greg Ryan**

Law360, New York (October 30, 2012, 6:12 PM ET) -- An Illinois federal judge ruled last week that federal labeling law preempts a proposed class action brought by a Muslim woman accusing the maker of Nature Made supplements of failing to reveal the presence of animal byproducts in its vitamins.

U.S. District Judge Charles Kocoras granted a dismissal motion from Pharmavite LLC on Oct. 24, maintaining that state-law claims filed by plaintiff Syeda Lateef are preempted by the Nutrition Labeling and Education Act of 1990, which amended the Food, Drug and Cosmetic Act.

Lateef, an Illinois resident, is a practicing Muslim who refrains from eating pork and pork byproducts for religious reasons. She purchased Nature Made Vitamin D tablets, relying on a list of ingredients on the label to ensure they did not contain pork byproducts, according to her complaint. However, she later learned that the vitamins were coated with gelatin, which is made in part with pork and other animal byproducts, the complaint said.

Lateef agreed her claims were preempted as they related to the products' labeling, but insisted instead that they could apply to statements on Pharmavite's website about the transparency of its products' ingredients. But Judge Kocoras held that one state-law claim relied exclusively on the labeling. Even if it did not, the judge said, Lateef lacked standing, since she did not allege she visited the Pharmavite website before purchasing the vitamins.

"She makes no allegation that she visited the website, knew that it existed, or was aware of the statements on it," Judge Kocoras said. "She thus fails to establish a causal link between her injury — ingesting animal and pork-byproducts — and Pharmavite's Web-based marketing."

The judge gave Lateef leave to amend her allegations. An attorney for Pharmavite, Joseph Price of Faegre Baker Daniels LLP, said it would be difficult for any new complaint to overcome the deficiencies of the first.

"Because preemption bars the claims, I don't think there's anything the plaintiff can plead to get around that," Price said.

Among the claims on the website highlighted by Lateef were "Nature Made... is one example of a brand that goes above and beyond to guarantee to consumers that what is on the label is in the bottle" and "We make sure consumers can trust what they're putting into their body."

The proposed class consisted of Illinois residents who bought a Nature Made supplement containing an animal byproduct that did not include the animal byproduct on the label. The suit brought claims for violation of the Illinois Consumer Fraud and Deceptive Business Practices Fraud Act and Magnuson-Moss Warranty Act, breach of express warranty and unjust enrichment. Lateef abandoned the Magnuson-Moss claim in a response brief.

An attorney for Lateef could not be immediately be reached Tuesday for comment on the ruling.

Lateef is represented by Stuart Davidson and Christopher Martins of Robbins Geller Rudman & Dowd LLP and Muniza Bawaney and Rishi Vohra of Law First LLC.

Pharmavite is represented by Joseph Price, Bridget Ahmann, Bruce Jones, Mindy Finnigan and Michael Kanute of Faegre Baker Daniels LLP.

The case is Lateef v. Pharmavite LLC et al., case number 1:12-cv-05611, in the U.S. District Court for the Northern District of Illinois.

--Editing by John Quinn.

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