

Yoplait Yogurt Dispute Belongs Before The FDA, Judge Says

By Nathan Hale

Law360, New York (December 10, 2012, 8:15 PM ET) -- A Minnesota federal court dismissed a class action Monday against General Mills Inc. and Yoplait USA Inc., saying an Illinois man's claim that Yoplait's Greek yogurt is "neither yogurt nor Greek" is a matter best resolved by the U.S. Food and Drug Administration.

In her opinion, U.S. District Judge Susan Richard Nelson said the FDA should settle the debate over what constitutes Greek yogurt and help put an end to the multitude of similar false advertising suits pending in other courts. She tossed the proposed class action and suggested the FDA take up the matter.

"The increasing volume of this litigation creates the potential for inconsistent judicial rulings," Judge Nelson wrote. "This underscores the importance of promoting uniformity by referral of this matter to the FDA."

In his suit, plaintiff Martin Taradejna claimed the global food giant had knowingly misrepresented the quality of its product, using a low-cost additive but charging consumers like him a premium price to grab a piece of the growing Greek yogurt market.

Minneapolis-based General Mills does not strain its Yoplait Greek yogurt products — an essential characteristic of Greek yogurt — but rather thickens the goods using a substance called milk product concentrate, in essence a blend of dry dairy ingredients, Taradejna said in his complaint.

The FDA defines yogurt as milk containing two essential cultures, with certain optional ingredients and vitamins, the complaint said. The definition does not include MPC, according to the complaint.

General Mills has thus misbranded the product under the Federal Food, Drug and Cosmetic Act and several Minnesota trade practice acts, the complaint said, knowingly marketing the product to consumers as something it is not.

General Mills countered that because the FDA had stayed a 1981 provision in its yogurt definition that would have limited "other optional ingredients," that left the door open for MPC's use. The company also cited more recent FDA comments and a proposed 2009 rule to support their argument.

Judge Nelson ultimately decided to leave the question of yogurt's proper identity up to the FDA and dismissed the case on the grounds of primary jurisdiction, noting the scientific and nutritional expertise of the agency and a pending 2009 proposed rule.

"We are pleased with the judge's decision, and we stand behind the accuracy of our product label," General Mills spokeswoman Maerenn Jepsen told Law360 on Monday.

Taradejna shared common representation from Ridout & Lyon LLP with the plaintiff Lindsay Gallant in one of two similar cases pending against General Mills in California.

Gallant's case, and another, Linda Hawkins et al. v. General Mills Inc. et al., had been stayed pending the outcome of this one, according to court records. Gallant and Hawkins now have 21 days to amend their complaints.

Attorneys for the plaintiff could not be reached for comment Monday.

Taradejna's suit brought claims for violation of Minnesota's Prevention of Consumer Fraud Act, Unlawful Trade Practices Act and Uniform Deceptive Trade Practices Act. It seeks actual and statutory damages from General Mills, prejudgment and post-judgment interest, as well as an injunction barring General Mills from continuing the marketing practices at issue.

Taradejna is represented by David M. Cialkowski, Brian C. Gudmundson and Hart L. Robinovitch of Zimmerman Reed PLLP and Christopher P. Ridout and Caleb L.H. Marker of Ridout & Lyon LLP.

General Mills Inc. is represented by Sarah L. Brew, Steven B. Toeniskoetter, Aaron D. Van Oort and Erin M. Verneris of Faegre Baker Daniels, William F. Stute of DLA Piper, and David T. Biderman and Charles C. Sipos of Perkins Coie LLP.

The case is Taradejna v. General Mills Inc. et al, case number 0:12-cv-00993, in the U.S. District Court for Minnesota.

--Editing by Kat Laskowski.