CARLTON FIELDS

Food for Thought: California Court Prevents Second Bite at the ~~Apple~~ Yogurt

March 07, 2016

Torrent v. Yakult U.S.A., Inc., No. 8:15-cv-00124-CJC-JCG (C.D. Cal., March 7, 2016)
A California court once again held that plaintiff Nicolas Torrent does not have standing to force yogurt manufacturer, Yakult USA, Inc., to change its labeling/advertisements. Torrent brought a putative class action on behalf of California purchasers of Yakult, a yogurt drink. Plaintiff alleged that Yakult's marketing claims about digestive health benefits associated with its yogurt drink were false and likely to deceive reasonable consumers. Torrent filed a motion for class certification under Rule 23(b)(1)(A) and (b)(2). On January 7, 2016, the district court denied plaintiff's motion, determining that he lacked standing to pursue the injunctive relief sought. The district court held that plaintiff lacked standing to bring such a class action because he would not suffer any future harm. *See Torrent v. Yakult U.S.A., Inc.*, No. 8:15-cv-00124-CJC-JCG, 2016 WL 4844106 (C.D. Cal., Jan. 5, 2016). Ten days later, in an attempt to suffer future harm, plaintiff purchased another Yakult yogurt drink and again moved for class certification. The district court again denied plaintiff's motion. **Injunctive Relief Standing** To have standing to pursue injunctive relief in federal court, a plaintiff must demonstrate that there is "a sufficient likelihood that [he] will be wronged in a similar way" in the future. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983). In January, the court determined that Torrent did not meet this standard because he indicated that he never planned to buy Yakult again. Plaintiff said as much in his operative complaint and answers to interrogatories, stating: "Had I known that Yakult was falsely, deceptively, and misleadingly advertised, I would not have purchased Yakult." Because Torrent would not purchase Yakult again in the future, he would not suffer any future harm. As such, Torrent lacked standing to pursue injunctive relief. **Second Bite at the Yogurt** Understanding that he could not proceed with his lawsuit because he had no intention of ever buying Yakult again, Torrent sought to rectify his problem — by buying Yakult, again. Ten days after the court denied plaintiff's motion to certify for lack of standing, Torrent purchased a Yakult beverage, filed a renewed motion for class certification, and stapled a copy of his receipt to the motion. The court was not impressed. The District Court for the Central District of California reasoned that courts are generally "reluctant to allow parties to have a second bite at the apple by relitigating issues that have already been

decided." *See Anderson Living Trust v. WPX Energy Prod., LLC*, 308 F.R.D. 410, 438 (D.N.M. 2015) (internal quotations omitted). Allowing Torrent to seek injunctive relief based on his (very) recently expressed intention to continue purchasing Yakult in the future would allow him to fundamentally alter his theory of the case and relitigate issues that were already ruled on. Rule 23 does not require such a result and the local rules expressly prohibit it. As such, the court denied plaintiff's motion for class certification… again.

Related Practices

Mass Tort and Product Liability

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.