CARLTON FIELDS

Food for Thought: Organic Food Act Doesn't Preempt Certain State Law Mislabeling Claims

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Quesada v. Herb Thyme Farms, Inc., 62 Cal.4th 298 (Cal. 2015)

On December 3, 2015, the California Supreme Court unanimously held that state law claims of intentional mislabeling of produce as organic are not preempted by the Organic Food Act of 1990 (7 U.S.C. §§ 6501-6522). In *Quesada v. Herb Thyme Farms, Inc.,* plaintiff alleged the "Fresh Organic" label was misleading because the packages include herbs processed from both USDA-certified organically processed farms as well as conventional non-organic farms. While the Organic Food Act regulates organic labeling, the California Supreme Court interpreted the Act's mislabeling sanctions narrowly, finding that because Congress used express language preempting matters relating to organic product processing, but no similar "language of exclusivity" for organic labeling misuses, state law claims and remedies can survive. In fact, the court went a step further by finding such state law claims promote, rather than hinder, Congress' intent to play a more peripheral role in food labeling oversight – a longstanding matter of local concern. Federal preemption has often been a defense to consumer class actions. The weakness of the Organic Food Act in not clearly preempting state law may be unique to that statute. But consumer goods manufacturers and distributors should expect more fights over the federal preemption defense. Whether this ruling will be limited to just that federal act

or will have broader implications remains to be seen. This new decision opens the door for other state law organic mislabeling claims. Consumer goods manufacturers should expect even more litigation over advertising statements—and review their labels with that in mind. Ultimately the U.S. Supreme Court will have the last word. *Read more significant court decisions affecting the food industry in Food for Thought: 2015 Litigation Annual Review.*

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