

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 22 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KERSTINE BRYAN,

Plaintiff - Appellant,

v.

DEL MONTE FOODS, INC.,

Defendant - Appellee.

No. 23-3685

D.C. No.

3:23-cv-00865-MMC

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Maxine M. Chesney, District Judge, Presiding

Submitted November 20, 2024**
San Jose, California

Before: GRABER, FRIEDLAND, and BUMATAY, Circuit Judges.

In this putative class action, which is in federal court pursuant to 28 U.S.C. § 1332(d)(2), Plaintiff Kerstine Bryan alleges that Defendant Del Monte Foods, Inc., has violated California and Oregon law because the labels for its fruit cups,

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

containing the phrase “fruit naturals®,” falsely lead consumers to believe that all ingredients in the fruit cups are natural. The district court dismissed the operative complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). On de novo review, McGinity v. Procter & Gamble Co., 69 F.4th 1093, 1096 (9th Cir. 2023), we affirm.

The labels on the front of the fruit cups are ambiguous. A front label is ambiguous if “reasonable consumers would necessarily require more information before they could reasonably conclude” that the front label makes a specific factual representation. Moore v. Trader Joe’s Co., 4 F.4th 874, 882 (9th Cir. 2021).

First, in the phrase “fruit naturals®,” “naturals” is a noun, not a descriptive adjective. The presence of the registered-trademark symbol after “fruit naturals” also suggests that the phrase is just the name of the product. Additionally, all labels display the picture and name of the fruit in the cups, followed by the phrase “in extra light syrup.” Taken together with the rest of the front label, including “fruit naturals®” (emphasis added), the “syrup” phrase affirmatively conveys that, although the fruit itself is natural, the syrup may not be.

The survey that Plaintiff contends shows that the label is deceptive is uninformative because it did not ask what respondents thought about the noun “naturals”; rather, it asked about the adjective “natural.” And, importantly, the survey asked people what they thought “natural” should mean on the label of a

product, not what they thought it actually did mean as used on these labels.

Because Plaintiff has not plausibly alleged that the front label is “unambiguously deceptive to an ordinary consumer,” Whiteside v. Kimberly Clark Corp., 108 F.4th 771, 780 (9th Cir. 2024), a reasonable consumer would look at the back label. As in McGinity, the front label “does not promise that the product is wholly natural,” as would a label declaring that a product is “100% natural” or “all natural.” 69 F.4th at 1098. Accordingly, “the ambiguity can be resolved by reference to the back label.” Id. at 1099. Here, the back label accurately and clearly discloses several synthetic ingredients about which Plaintiff complains.

AFFIRMED.