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HILL V. ROLL INTERNATIONAL: LABELS MATTER, BUT SOME MATTER MORE THAN OTHERS

In *Kwikset Corp. v. Superior Court*, the California Supreme Court stated that "labels matter" in Unfair Competition Law (UCL) cases. This statement is sometimes cited to support a suggestion that manufacturers should not be able to contend that the labels they create for marketing purposes don't "matter" to consumers. But this reads far too much into the court's generic statement. In particular, a manufacturer certainly does not have the burden of showing that its label *didn't* matter to a particular plaintiff, or, more broadly, that it could not have mattered to the "reasonable consumer." The plaintiff has the burden of alleging and proving facts to the contrary.

Hill v. Roll International Corp. is an important reminder that, far from presuming a particular label "mattered," courts can and should dismiss a UCL case on the pleadings if they find the label statements that the plaintiff alleged were misleading would *not* have mattered to a reasonable consumer.

In *Kwikset*, which involved locks labeled "Made in U.S.A.," the court held that the plaintiff had adequately alleged standing to sue by claiming that the lock (which worked perfectly well) was still "worth less" to him because the statement "Made in U.S.A." was false. The purchase price (or part of it) could therefore be "lost money" to establish UCL standing. So holding, the court found that this statement could "matter" to some consumers, who might reasonably base purchasing decisions on it, and so the truth of the statement could be considered to have economic value for UCL standing purposes. But this is far from a declaration that *any* statement must be viewed as material, as is sometimes suggested, just because a manufacturer puts it on a label.

Hill persuasively demonstrates this principle. Plaintiff Ayana Hill alleged that a green-water-drop symbol on Fiji water labels, as well as slogans such as "Fiji-Green" and "Every Drop is Green," misled her and other consumers. Hill alleged,

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more generally, that the Fiji label was designed to take advantage of consumers' growing environmental consciousness by misrepresenting the product as more environmentally friendly than its competitors'. She argued that the green-drop symbol was similar to environmental seals of approval given by independent, third-party organizations to denote environmentally superior products. Had she known the truth, Hill alleged, she would not have paid the 15-percent premium she claimed to have paid for the "environmentally friendly" water.

The defendant demurred, arguing in part that no reasonable consumer would have been misled by the symbol and statements to which Hill referred. The trial court agreed and dismissed the case.

Some courts have taken the position that whether a "reasonable consumer" would have been misled by a label is a question of fact that can never, or almost never, be decided on the pleadings. (A leading and occasionally influential example is the Ninth Circuit's decision in *Williams v. Gerber*.) This would also be the effect of construing the statement that "labels matter" as some sort of presumption. The ultimate result would be a dramatic increase in the costs of defending even weak cases by opening the door to expensive discovery.

The court took a contrary position in *Hill*, holding that no reasonable consumer would have relied on the labels as Hill claimed she had. The symbol bore no recognized logo or name of any group or third-party organization. Although the Federal Trade Commission (FTC) has stated that, for example, a globe icon could potentially be a misleading suggestion of third-party certification, the *Hill* court found a globe to be "more suggestive of a seal of an environmental organization" than the green-water drop on the Fiji label. After all, the court pointed out, a water drop is the most logical icon for bottled water, and although the green color of the water drop might have an environmental connotation, the "FTC does not prohibit companies from 'touting' the 'green' features of a product." As a matter of law, in other words, there is nothing inherently misleading about green.

The *Hill* court also discussed and distinguished *Kwikset*, which, it emphasized, was a case about standing. The court agreed with the statement that "labels matter," at least in the abstract: of course the green drop had been placed on the label for a reason, namely to promote marketing of Fiji water and to "signify 'something to do with the environment.'" Still, the court held that no reasonable consumer would have found this "material." Far from applying some express or implied presumption that all labels "matter," the court rejected the plaintiff's specific allegations that this label had actually mattered to *her*—not because it made findings of fact, but because it held as a matter of law that this label would *not* matter to a reasonable consumer. Importantly, the court did not hold, as the Ninth Circuit strongly implied in *Williams* was the California rule, that the defendant would have to take Ms. Hill's deposition and conduct other relevant discovery to get rid of the case. Instead, it dismissed the case on the pleadings.

Hill demonstrates that even after *Kwikset*, California courts remain—or should remain—willing and able to dismiss unreasonable consumer claims at the pleading stage, which is crucial to controlling the costs of frivolous and near-frivolous lawsuits. In other words, yes, "labels matter," generally speaking, but some matter a lot more than others; as *Hill* shows, even in the context of consumer litigation, at least some labels just don't matter at all. In those cases, a plaintiff should not get past the starting gate.

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