
Food & Beverage

LITIGATION UPDATE

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Plaintiffs Fail to Follow Court's Blueprint; Obesity-Related Claims Against McDonald's Dismissed

The U.S. district court judge who invited minor plaintiffs to amend their once-dismissed obesity-related complaint against McDonald's Corp. has granted defendant's motion to dismiss the amended complaint and denied plaintiffs' request for leave to amend. [*Pelman v. McDonald's Corp.*, No. 02 Civ. 7821 \(RWS\) \(S.D. N.Y. 9/3/2003\)](#) In so ruling, the court effectively terminated the litigation that has captured the public's attention in recent months and generated legislative proposals to insulate the food industry from liability for such claims. The court dismissed the original complaint during late January 2003 in a 65-page opinion that provided plaintiffs with a blueprint for amending their claims.

The Amended Claims

In February, plaintiffs Ashley Pelman and Jazlyn Bradley filed an amended class action complaint that discussed the purported detrimental effects of obesity and contained more detailed information about the purported deceptive advertisements and the promotional campaigns which allegedly led plaintiffs to believe that McDonald's fare was "healthy and wholesome." They claimed that consumption of defendant's products had been a substantial factor in the development of their obesity, diabetes, coronary heart disease, high blood pressure, elevated cholesterol intake, and/or other detrimental and adverse health effects and/or diseases.

The amended complaint alleged "deceptive practices in the promotion, distribution, advertising, processing and sale of certain products." Specifically, plaintiffs claimed that (i) McDonald's violated consumer fraud statutes and the New York Consumer Protection Act since 1987 by conducting widespread advertising campaigns that its foods "were nutritious, of a beneficial nature / effect, and/or easily part of a healthy lifestyle if consumed on a daily basis." (ii) plaintiffs relied on these "representations and nutritional claims of the attributes of the aforementioned products in connection with the use and consumption of said food products," (iii) any company representation that "it provides nutritional brochures and information at all of [its] stores" is misleading for failing to include information as to the "nutritional consequences of consumption of said foods," and (iv) fast-food products "were so processed with additives and other ingredients and preservatives, as to create a danger and hazard unknown to the Plaintiff purchasers and consumers if consumed on a daily basis, over several years."

Reliance

Noting that plaintiffs had dropped their negligence claims shortly before oral argument, the court first found that the plaintiffs relied on advertisements and promotions that were part of actions taken by state attorneys general against McDonald's in the late 1980s and thus, that the statute of limitations barred all claims except for those of the infant plaintiffs, whose claims would be tolled due to their infancy. Second, while finding that plaintiffs' allegations of reliance on false advertising were for the most part vague, the court ruled that plaintiffs had implicitly and successfully stated reliance on a single allegedly deceptive advertising campaign, i.e., that McDonald's was switching to "100 percent vegetable oil" and that plaintiffs would not have consumed its fries and hash browns if they had known the products contained beef or extracts and *trans*-fatty acids.

Causation

Most significantly, the court found that plaintiffs failed to allege that consumption of McDonald's food caused their injuries. According to the court, "the plaintiffs have stated, albeit just barely, a causal connection between the deceptive acts and the plaintiffs' decisions to consume McDonald's food, or to consume it more frequently than they would have otherwise. Plaintiffs have failed, however, to draw an adequate causal connection between their consumption of McDonald's food and their alleged injuries." Observing that plaintiffs had specified in their amended complaint how often they ate at McDonald's, the court found nevertheless that they failed to "address the role that 'a number of other factors other than diet may come to play in obesity and the health problems of which the plaintiffs complain.'" Plaintiffs argued in their opposition brief that "surveys and sampling techniques" may be employed to establish causation, but the court found the argument irrelevant "where a small number of plaintiffs are alleging measurable injuries."

According to the court, "Following this Court's previous opinion, the plaintiffs should have included sufficient information about themselves to be able to draw a causal connection between the alleged deceptive practices and the plaintiffs' obesity and related diseases. Information about the frequency with which the plaintiffs ate at McDonald's is helpful, but only begins to address the issue of causation. Other pertinent, but unanswered questions include: What else did the plaintiffs eat? How much did they exercise? Is there a family history of the diseases which are alleged to have been caused by McDonald's products?"

The court further found that the advertising campaign on which plaintiffs stated reliance is not objectively deceptive. Examining company statements about its fries and hash browns being "cholesterol free" or containing 0 milligrams of cholesterol, the court notes that plaintiffs failed to allege that the beef flavoring contains cholesterol or that McDonald's "made any representations about the effect of its french fries on blood cholesterol levels." (emphasis in original) Finding insufficient allegations of causation or deception, the court granted defendant's motion to dismiss. Plaintiffs' motion for partial summary judgment was dismissed as moot, and their request for leave to amend was denied for their failure to allege a cause of action despite the court having laid out "in some detail the elements that a properly pleaded complaint would need to contain.... Granting leave to amend would therefore be futile."

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